United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

77-1013

CRIMINAL

In The

United States Court of Appeals

For The Second Circuit

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

KIM CRANSHAW,
Defendant-Appellant.

On Appeal from the United States District Court, Southern District of New York.

JOINT APPENDIX

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UNITED STATES COURT OF APPEALS
FILED
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SECOND CIRCUIT

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PETTY OFFENSE NO
OTHER MINOR OFFENSE MO
OTHER MISDEMEANOR Nos
FELONY Fel X

JUDGE/MAGISTRATE Assigned: 0208 | 01 | 0834 (District | Office | Disp. Sentence)

U.S. vs.

DOCKET ENTRIES

CRANSHAW, KIM (pp. 1a-3a)

(LAST FIRST MIDDLE)

JUVENILE L_J

Case Filed: Mo. 10 Day 15 — 76 0967

No. of Defts * 02

U.S. MAG. CASE NO. 76-

U.S. TITLE/SECTION	OFFENSES CHARGED	ORIGINAL COUNTS
18:2113(a)	Bank Robbery	1
18:2113(d)	Armed Bank Robbery	2
18:924(c)(1)&(2)	Use of firearm in commission of felony	3
18:2113(a)	Bank Robbery	1
18:2113(d)	Armed Bank Robbery	2
18:924(c)(1)&(2)	Use of firearm in commission of felony	3

SUPERSEDING COUNTS

BAIL

L_J Denied

$100 O.R.

Date

X Bail Not Made

Station Chain (See Docket)

II KEY DATES & INTERVALS

ARREST of	INDICTMENT X	ARRAIGNMENT	TRIAL
U.S. Custody Began	High Risk Date	10-21-76	Voir Dire
Summons Served	Information 10-15-76	Initial	Trial Begun X 11-29-76
Trial Appearance	Indict Waived	X Not Guilty	Trial Ended 12-2-76
	In Custody in this Dist.	Final Plea	
	X Superseding Indict Info 11-8-76		

MAGISTRATE

	DATE	INITIAL/NO.		INITIAL/NO.	OUTCOME
Search Warrant Issued			INITIAL APPEARANCE DATE		
Search Warrant Return			PRELIMINARY EXAMINATION Date Scheduled		HELD FOR GJ / OTHER
Summons Issued			PRELIMINARY EXAMINATION Date Held		FILED IN DIST. CT.
Summons Served			REMOVAL HEARING		
Arrest Warrant Issued	9/30/76	NG-08AJ	WAIVED / NOT WAIVED		
COMPLAINT	9/30/76	NG-08AJ	X REMOVED / IDENTITY		
OFFENSE (In Complaint)	18 USC 2113(a) - BANK ROBBERY				

U.S. Attorney or Asst.

Robert J. Jossen
791-0043

ATTORNEYS

J. H. Doyle III of
Anderson Russell Kill & Olick
630 5th Ave. NYC 10020 397-9700

Claxton-01

DATE	PROCEEDINGS
9/30/76	Complaint filed, warrant issued
10/8/76	Defendant presented, Legal Aid assigned. Defendant remanded into the custody of U.S. Marshal in lieu of $100,000 cash or surety.
10/15/76	Indictment filed, 76 Cr. 967.....Duffy,J.
10-21-76	Deft. (atty. John P. Curley) pleads not guilty. Deft. continued remanded in lieu of $100,000 cash or surety bail as fixed by Magistrate. Assigned to MacMahon,J. for all purposes.....Gagliardi,J.
11/1 76	Filed Notice of Motion for suppression from use in evidence, and Memor of Law.
11/5/76	Filed Gov't pre-hearing Memorandum of Law in opposition to defendants' to suppress.
11/5/76	Filed Affidavit of Robert B. Fiske, Jr., US Atty., in opposition to the various motions to suppress evidence.
11-8-76	Filed Superseding Indictment & referred to MacMahon,J. .....Cooper,J.

CONTINUED ON PAGE 2

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DATE	PROCEEDINGS — PAGE TWO	V. EXCLUDABLE DELAY (a)	(b)	(c)	(d)	E
11/9/76	Deft. (atty John Doyle) makes application for bail reduction, denied after argument. Deft. move to suppress certain evidence denied after testimony and argument. See motion endorsed this date. So ordered MAC MAHON, J.					
11-22-76	Filed Gov't's request to charge.					
11-24-76	Filed Gov't's Memorandum of Law on the Admissibility of evidence of similar criminal acts.					
12-1-76	Filed MEMORANDUM - deft's motions to suppress in-court identification, suppress physical evidence and to suppress statements are in all respects denied. So ordered Mac Mahon, J. m/n					
12-2-76	Fl Memo End on bk of motion fld11-1-=The within motions are denied. Memo to Follow...MacMahon,J mn					
12-6-76	Filed Deft's Requests to Charge					
11-29-76	Deft with atty pres., for trial, began & continued.					
11-30-76	Trial continues.					
12-1-76	Trial Continues.					
12-2-76	Trial Continues, Jury retires at 4:15 PM returns at 10:15 PM finds Cranshaw GUILTY on all counts. Bail continued. Deft to be sentenced on 12-17-76. So ordered .....MAC MAHON, J.					
12-16-76	Fld Deft's request to charge .					
12-16-76	Fld Memo of Law of Deft. relating to his privelege against self-incrimination of trial.					
12-17-76	Fld Judgement and Commitment Order. The court finds that the defendent was twenty-one years of age at the time ofthe conviction and is eligible for treatment under the Federal Youth Corredtions Act. but that he may not be able to derive maximum benefit from treatment prior to the expiration. Accordingly it is adjudged that: On Count 2, the defendent is hereby commited to the custody of the Atty. Gen. or his authorized representatve for treatment and supervision, pursuant to 18 U.S.C. § 5010 (c), for a period of EIGHT (8) YEARS or until discharged by the Board of Parole, on Count 1. no sentence is imposed; United States v. Mariani,539 F. 2d 915 (2d Cir. 1976) ; On Count 3, imposition of sentence is suspended...MacMohan, J.					
12-22-76	Filed NOTICE OF APPEAL to the USCA from the judgment filed 12-17-76 by the deft. M/n. US ATTY and Deft.					
12-29-76	Filed Magistrate's Temporary Commitment. Bail = $100,000.					
12-24-76	[illegible] mc 12/17/76.					
1-6-77	Filed certified original records transmitted to the USCA on 1 6-77.					
1-10-77	Filed [illegible] dated: Nov 9-76.					
1-10-77	Filed [illegible] dated Nov. 29 + 30-76.					

FINE AND RESTITUTION PAYMENTS

RECEIPT NUMBER	CD NUMBER	DATE	AMOUNT

CONTINUED ON PAGE 3

DATE	PROCEEDINGS
1-10-77	Filed NOTICE of the 1 st Supplemental Record being Certified and Transmitted to the USCA.
1-20-77	Filed NOLLE PROSEQUI granted as to the Superceding Indictment. So ordered [illegible], J.

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RJJ:rs

INDICTMENT

(pp. 4a-5a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

UNITED STATES OF AMERICA :

-v- :

WALTON CLAXTON and
KIM CRANSHAW, :

Defendants. :

- -x

INDICTMENT

76 Cr. 967 LFM

COUNT ONE

The Grand Jury charges:

On or about the 30th day of August, 1976, in the Southern District of New York, WALTON CLAXTON and KIM CRANSHAW, the defendants, unlawfully, wilfully and knowingly, by force, violence, and intimidation, did take, from the person and presence of another, money and property in the approximate amount of $19,948.00 which belonged to and was in the care, custody, control, management and possession of the Chemical Bank, 433 East 36th Street, New York, New York, a bank the deposits of which were then and there insured by the Federal Deposit Insurance Corporation.

(Title 18, United States Code, Sections 2113(a) and 2.)

COUNT TWO

The Grand Jury further charges:

On or about the 30th day of August, 1976, in the Southern District of New York, WALTON CLAXTON and KIM CRANSHAW, the defendants, unlawfully, wilfully and knowingly did assault and put in jeopardy the lives of various

RJJ:rs

persons by the use of a dangerous weapon, to wit, a firearm, while committing the offense described in Count One of this indictment.

(Title 18, United States Code, Sections 2113(d) and 2.)

COUNT THREE

The Grand Jury further charges:

On or about the 30th day of August, 1976, in the Southern District of New York, WALTON CLAXTON and KIM CRANSHAW, the defendants, did use a firearm to commit a felony and did carry a firearm unlawfully during the commission of a felony for which they may be prosecuted in a court of the United States, namely, the offenses charged in Counts One and Two in this indictment.

(Title 18, United States Code, Sections 924(c)(1) and (2), and 2.)

FOREMAN

ROBERT B. FISKE, JR.
United States Attorney

the court.

MR. CIAMPA: I'm sorry, your Honor.

The government's evidence, you will see, comes from people that believe they saw things and in the defense's cross-examination you may decide whether there are certain other suggestions that may have suggested what the government's witness thinks she saw.

In the end, I'm sure -- my client is here because he feels he is not guilty, because he says he is not guilty and he pleaded not guilty.

In the end, when you listen to the evidence and when you weigh it, keeping in mind that we are not here to prove innocence, that you will find my client not guilty. Thank you.

THE COURT: All right, Mr. Mazur.

MR. MAZUR: Government calls its first witness Velma Graham.

V E L M A G R A H A M, called as a witness, having been duly sworn, testified as follows:

THE COURT: Keep your voice up, please, so Mr. Edelman, the last gentleman over there can hear you.

DIRECT EXAMINATION

BY MR. MAZUR:

Q By whom are you employed?

A Chemical Bank.

Q Where?

A 453 East 86th Street.

Q What is your position with that bank?

A Teller.

Q How long have you had that position?

A Four and a half years.

Q Were you a teller at that bank on August 30th of this year?

A Yes.

Q Did there come a time that day when a robbery occurred at your bank?

Yes.

Q Would you tell the ladies and gentlemen of this jury, approximately when in the day that took place?

A 2:30.

Q Would you tell them just what it is that you saw starting from the beginning of that robbery?

A I saw a man standing at the head of the tellers' line. He had his arms folded. Then -- he kept looking around. Right after that I saw another man came in and he was behind a customer. I thought it was the customer's son. He stepped over the rope and he stood in the line. Then

a third man came and he went straight to the head teller. He said something to the head teller which I didn't hear. Then he said to me -- he pointed the gun at me and he said "You, get back there," and he jumped the counter.

Q Miss Graham, I show you what's been marked as Government's Exhibit 12 for identification. It is a little awkward but I will put it on the table before you.

Miss Graham, I ask you if that's a floor plan of the way your bank looked on August 30, 1976?

A Yes.

Q Do you have a red pen in your hand?

A Yes.

Q Could you place your initials as to the point in the bank where your teller's station is and where you were during the bank robbery, just your initials in red pen.

Now, the first man you said you noticed in the bank at the head of the teller line, would you please place an X at the spot where the head of the teller line was and where you saw him, approximately. The man who you saw come in behind your regular customer who you thought might be his son, place a W where he was when he got in the teller's line.

Now, the third man, the man who first talked to the head teller and then you said pointed a gun at you and

spoke to you, place just the number 3 where you saw him talking to the head teller.

Now, tell the ladies and gentlemen of the jury what it was that you saw the first man do after you first noticed him, the man who was standing at the head of the tellers' line.

A After the third man came in and pointed the gun at me, he got out of the line and went towards the office.

Q You say he got out. The man who was at the head of the tellers' line?

A Right.

Q He went back towards where?

A The platform, where the officers are.

Q Would you place the letter O where the officers' platform is on that diagram.

Now, the second man, the man that you thought was the regular customer when he stopped over the tellers' line, what did he do during the course of the robbery?

A .He went towards the door of the bank.

Q Did he stay there during the course of the robbery as far as you could see?

A Well, when the robbery was announced, I noticed--

MR. DOYLE: Could I ask the witness to speak more slowly and loudly?

THE COURT: Yes. Please a little more slow and loudly, please. Repeat the question.

Q I believe the question was, what did you see the man who stepped into the tellers' line, the second man who walked into the bank, what did you see him do during the course of the robbery?

A When the robbery was announced, he got out and he stood by the door. That's when I noticed him just for a short while. He was there, he didn't know where he went after the robbery started, what he did.

Q Would you just draw an arrow from the W to the point where you saw him go, approximately.

MR. DOYLE: What was that letter?

MR. MAZUR: W.

Q The third man, number 3, what did he do during the course of the robbery after he pointed the gun at you?

A He jumped the counter.

Q He jumped over with counter?

A Station number 2.

Q Then what did he do?

A Then he told the girl to open the drawer and put-- no. Then he pulled a plastic bag from his coat. He told the girl to open the drawer and he started putting the money in the bag and she helped him.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

Q Is that number 2?

A Yes.

Q Teller station number 2?

A Yes.

Q Can you describe that bag, the plastic bag he took out to the ladies and gentlemen of the jury?

A It was a white bag with red and black writing on it.

Q What did he do after he was at teller station number 2 and had that exchange with teller number 2?

A He went to station 3 and did the same thing, station 4, same thing, then he said to me, you come with me. And he went to my station and took the money.

Q Who opened the drawer?

A I opened the drawer.

Q Who removed the money from the drawer?

A The man removed the money.

Q Why did you let him do that?

A He told me to and he had a gun on me.

Q What did he do next after he took the money from your drawer?

A He jumped over.

Q Back over onto the bank floor?

A Yes.

SOUTHERN DISTRICT COURT REPORTERS U.S. COURTHOUSE

Q Then what happened?

A Then he walked towards the door of the bank and before he left he said "No one was to watch what direction they were going. Because if they do, they would be in big trouble."

Q Miss Graham, would you draw an arrow with that red pen from number 3 showing the course of number 3 during the robbery, approximately?

A Would you please repeat that.

Q Number 3. The man who jumped over the counter, would you just draw a line showing his physical path during the robbery.

Are you finished?

A Yes.

Q Miss Graham, you have before you what previously has been marked as Government's Exhibits 1, 2 and 3 for identification, a series of photographs.

I ask that you look through each one of those photographs.

(Pause)

Q Have you looked at the photographs, Miss Graham?

A Yes.

Q Miss Graham, do those photographs depict the Chemical Bank at 453 East 86th Street during the course

of the August 30th robbery?

A Yes.

Q The government offers as Exhibits 1, 2 and 3 for identification into evidence.

MR. CIAMPA: Defendant Claxton has no objection, your Honor.

(Government's Exhibits 1, 2 and 3 received in evidence.)

xx

Q During the course of the robbery, approximately how far away from you was the man who jumped over the tellers' counter, number 3, on the diagram, when you first saw him?

A About 15, 20 feet.

Q And then when he pointed the gun at you, approximately how far away was he?

A That was before he jumped, the same.

Q About the same distance?

A Yes.

Q After he jumped over the counter and he began to collect the money from the various tellers, how far away was he then?

A About nine feet and then he got closer.

Q When he was actually at your station and he was removing the money from your drawer, how far away

from you was he?

A He was next to me.

Q Now, how long did all of this take from the time you first noticed him until the time that he got the money from your drawer and left the bank?

A About two minutes.

Q Would you describe that man to the ladies and gentlemen of the jury, what he looked like physically and what he was wearing?

A He was tall and slim. He was light in complexion. He was wearing a black coat. He had a cap on and what looked like a wig under the cap, a brown curly wig. He had dark glasses on.

Q Could you describe the gun to the ladies and gentlemen of the jury?

A It was a short black gun.

Q About how old was the man who jumped over the tellers' counter, approximately?

A Approximately 20, 22.

Q Miss Graham, you have before you what has been marked as Government's Exhibits 4 and 4A for identification. I ask you if those photos depict the man who held the gun on you and jumped the tellers' counter during the August 30th robbery.

A Yes.

MR. MAZUR: At this time the governmeht would offer as Exhibits 4 and 4A for identification into evidence.

MR. DOYLE: Defendants have no objection, your Honor.

THE COURT: Received.

xx (Government's Exhibits 4 and 4A received in evidence.)

Q Miss Graham, the man that you first saw come in behind the customer of yours and thought he was his son, what did you see him do during the robbery?

A When he came in, he stepped over the line and was standing in the tellers' line. When the robbery was announced, he stepped out of the line and stood by the door.

Q When he was standing in the line, approximately how far away from you was he?

A About 15 feet.

Q When he got over by the door during the course of the robbery, approximately how far away from you was he?

A About 20, 25 feet.

Q Now, would you describe to the ladies and gentlemen of the jury what that man looked like and what he was wearing during the robbery?

A He was short, dark in complexion. He had on a beach cap, white. He was wearing shiny sun glasses. He had

on a black shirt and pants.

Q Could you see whether he had a gun?

A No.

Q Would you describe his build to the ladies and gentlemen of the jury?

A He was short and slim.

Q And in age, approximately how old was he?

A About 28, 30.

Q Miss Graham, you have before you what has been marked as Government's Exhibits 5 and 5A for identification. I ask you whether those photographs depict the man in the white hat during the course of the robbery on August 30, 1976?

A Yes.

MR. MAZUR: Government offers its Exhibits 5 and 5A for identification into evidence.

MR. CIAMPA: I have no objection. Just let the record indicate it appears to defense counsel that each 5 and 5A have two photographs and that one appears to be an enlargement of the other. If that is not the case--

MR. MAZUR: I believe that is accurate.

THE COURT: Received.

xx (Government's Exhibits 5 and 5A received in evidence.)

Q Miss Graham, you have in front of you what's been marked as Government's Exhibit 6 for identification. Does

that photograph depict on the left, the individual who jumped over the tellers' counter and on the right, the man who was wearing the white hat during the robbery?

A Yes.

MR. MAZUR: Government offers Exhibit 6 for identification into evidence.

MR. CIAMPA: I have an objection to this exhibit.

THE COURT: I'm sorry, you have no objection.

MR. CIAMPA: I have an objection.

THE COURT: What is it?

MR. CIAMPA: The juxtaposition of the two individuals, it appears to me to have been done photographically rather than physically in the picture that is depicted.

MR. MAZUR: The government will stipulate that that picture does not depict the two individuals as they appeared together during the course of the robbery. That was composed of two separate photographs.

MR. CIAMPA: They are on one photograph spliced together. That is the suggestion.

THE COURT: Can you cut them?

MR. CIAMPA: They are already in evidence, both these photographs.

THE COURT: They are already in evidence, why didn't you object at the time.

MR. CIAMPA: I don't object what's in evidence. I object to the duplicity of another photograph taken together and spliced together.

MR. MAZUR: They are different in size and are an enlargement and may be helpful to the jury.

THE COURT: Cut them so we can make them a separate exhibit.

MR. CIAMPA: I will withdraw the objection.

THE COURT: We have already severed them.

MR. MAZUR: I will mark this other photograph Government's Exhibit 6A.

xx (Government's Exhibits 6 and 6A received in evidence.)

Q Did there come a time approximately ten days after that bank robbery when two FBI agents came to your bank and interviewed you?

A Yes.

Q Without telling us anything that they said, what did they do?

MR. DOYLE: Objection to what the FBI did ten days later.

THE COURT: Overruled.

A They brought six separate photographs and they spread them on the table. They asked me if I seen the guy that was in the bank at the time of the robbery in any

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of the photographs.

MR. DOYLE: Your Honor, this is an objection to this line of testimony.

THE COURT: Overruled.

MR. CIAMPA: Co-counsel are deemed to join in the objection, is that right?

THE COURT: Yes.

MR. DOYLE: I request a side bar conference before the witness is actually exhibited anything in connection with this line of testimony.

THE COURT: All right, Mr. Doyle.

(Side bar)

MR. DOYLE: Your Honor, these are mug shots of both defendants and I object to them on the ground that they will suggest to the jury that they have a criminal record.

THE COURT: Are they mug shots?

MR. MAZUR: Your Honor, they are mug shots.

THE COURT: Let me see them.

MR. MAZUR: I will point out to the court they have been taped on the front to eliminate the dates of arrest and identification numbers. They have been taped and masked on the back to eliminate the references to names of the individuals. It is the government's position,

your Honor, that in the first place these may not be recognized by jurors as mug shots. In the second place if they are a mug shot, the jury may infer they were mug shots taken from the very arrest of these defendants that led to the trial here today.

In the third place, case law in this circuit, as Mr. Doyle has displayed to me just before this trial, clearly evidence the fact that these are admissible when theyare in fact photographs that were shown to the witness out of which she made the photo spread identification.

THE COURT: I will overrule the objection. I don't like the practice. I would think the FBI would get with it by now.

(In open court)

Q Miss Graham, you have before you what has been marked as Government's Exhibit 7 for identification, I ask you if you can tell the ladies and gentlemen of the jury what those photographs are.

A They are the photographs the FBI man showed me ten days after the robbery.

Q How do you recognize them as those photographs?

A I dated all of them and initialed them.

Q What did you do when they put those photographs before you?

A I picked one of them.

Q Which one did you pick?

A This one.

MR. MAZUR: The record should reflect that the witness picked Government's Exhibit 7A for identification.

Q After you picked out that photograph, what did you do?

A I signed it and I wrote on the back of it that it looked like the guy that was in the bank at the time of the robbery.

Q Miss Graham, looking at the back of Exhibit 7A, I ask you to look at it and read to the jury your written statement of September 10, 1976.

A I immediately picked this guy because he looked like the guy who robbed the bank.

Q Now, which guy were you referring to, which of the robbers?

A The man that came in the line behind the customer.

Q The man in the white hat?

A Yes.

MR. CIAMPA: Objection to the leading.

THE COURT: Don't lead. Sustained.

Q Miss Graham, you have before you what has been marked as Government's Exhibit 8 for identification. I ask

you if you can tell the ladies and gentlemen of the jury what that is.

A That is a written statement I gave to the FBI.

Q On that same day?

A Yes, on September 10th.

Q I ask you if you would read that written statement to the ladies and gentlemen of the jury.

MR. DOYLE: Objected to as hearsay, your Honor.

MR. MAZUR: Your Honor, under Rule 801(d)1(c) of the Federal Rules of Evidence, it is not hearsay.

THE COURT: Let me see it.

MR. MAZUR: It is a prior identification by a witness.

MR. CIAMPA: It is not offered to rehabilitate any impeachment of the witness.

THE COURT: Overruled.

MR. DOYLE: One other legal point I can address to yours perhaps at the recess on this point although we should take it before it is read to the jury.

THE COURT: We will take our luncheon recess now. Don't talk about this case and don't let anybody talk to you about it to you. Be careful particularly in the elevator and halls of the court not to talk or discuss the case. When you come back from lunch you go right back

* * *

* * *

(Jury present)

THE COURT: I just want to say that I am not 25 minutes late. We have other matters and from time to time I am afraid we will have to ask you to be patient while we work about it. The judge is always juggling about 300, 400 or 500 hundreds cases. Things happen that require immediate attention that are not forseeable. With that many cases on almost every day something always happens. From time to time you will be excused and go to rest while we work out here on other things. All right, bring in the witness.

V F L M A G R A H A M, resumed.

MR. MAZUR: May I proceed, your Honor?

THE COURT: Yes.

DIRECT EXAMINATION CONTINUED

BY MR. MAZUR:

Q Miss Graham, you still have before you Government's Exhibit 7 and 7A for identification and also Government's Exhibit 8 for identification. I ask if you can tell the jury what Government Exhibit 8 is?

A It is a written statement I gave to the FBI.

Q With regard to what?

A The guy that was in the white hat.

Q I ask you if you would read your statement to the jury.

MR. DOYLE: Judge, as a matter of form it should be offered into evidence before it is read.

THE COURT: Yes. I suggest you can read it once it is in evidence.

MR. CIAMPA: May I see it?

MR. MAZUR: Yes.

At this time the government offers its Exhibits 7, 7A and 8 for identification into evidence.

THE COURT: What is the exhibit number on the letter?

MR. MAZUR: 8, your Honor.

MR. DOYLE: Objection on the ground previously stated.

THE COURT: Overruled.

(Government's Exhibits 7, 7A and 8 are received in evidence.)

xx

Q Miss Graham, did there come a time subsequent to the time when you saw Government's Exhibit 7 when agents of the FBI again came to the bank and interviewed you?

A Yes.

Q When was that approximately, do you recall?

A About two weeks after the robbery.

SOUTHERN DISTRICT COURT REPORTERS U.S. COURTHOUSE

Q What did they do when they came to the bank?

A They showed me six pictures and asked me if I had seen any of the guys who were in the robbery in the picture.

Q You now have before you Government's Exhibit 9 for identification and I ask you if you can tell the ladies and gentlemen of the jury what those pictures are.

A These are the pictures that the FBI men showed me.

Q How do you recognize those as the photos that they showed you?

A Because I initialed and dated all of them.

Q Does looking at the initials and dates on those photos refresh your recollection as to when the FBI came and interviewed you?

A Yes.

Q When did they?

A September 9th -- no, September 30th, excuse me.

Q Now, what did the agents do with those photographs when they interviewed you on September 30th?

A They spread them out.

Q What did you do?

A I picked this one.

Q Which one?

A Here.

MR. MAZUR: The record should reflect that the witness is pointing to Government's Exhibit 9A for identification.

Q You say you picked it out, what did you pick it out as?

A As the man who jumped the counter.

Q Did you do anything else concerning that photo spread?

A I signed my name and dated the picture.

Q Did you make a written statement about that photo spread?

A Yes, I did.

Q You have before you what is marked as Government's Exhibit 10 for identification and I would ask if you could tell the jury what that is.

A A written statement I gave to the FBI concerning the picture.

MR. MAZUR: At this time the government offers as Exhibits 9, 9A and 10 for identification into evidence.

MR. DOYLE: Same objection, your Honor.

THE COURT: As with the previous set.

MR. DOYLE: Yes, your Honor.

THE COURT: Overruled.

(Government's Exhibits 9, 9A and 10 received in evidence.)

Q Miss Graham,in the courtroom here today, do you see the man who jumped over the tellers' counter and pointed a gun at you during that bank robbery?

A To the best of my recollection, the man at the left, first man at the left looks like the man who jumped the counter.

Q By person at the left, who do you mean?

MR. MAZUR: Indicating the defendant Cranshaw.

MR. DOYLE: We concede that is defendant Cranshaw.

Q Miss Graham, when you say I believe so or to the best of your recollection, what do you mean?

A The best I can remember it now and at that time, this man looks like the man who jumped the counter.

Q Now, do you see in the courtroom today here the man who wore the white hat and was near the entrance to the bank during that August 30th bank robbery?

A The man on my right, he looks like the man that was in the white hat.

Q Would you point to him, Miss Graham please.

MR. MAZUR: Indicating the defendant Walton Claxton, your Honor.

THE COURT: Yes.

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MR. MAZUR: Is the identification conceded?

THE COURT: Whether there is or not--

MR. CIAMPA: The court has taken cognizance of that.

Q With respect to that individual, would you describe, as best you can, your present recollection of that bank robbery to the jury?

A He came in behind one of the--

Q No. Excuse me. Miss Graham, what I meant was, you said that you believed that that is the man that was in the white hat. I'm now asking if you can explain to the jury what you mean by believe.

A He looks like the man that was in the bank at the time.

Q Is that your best belief at the present?

A Yes.

MR. MAZUR: I apologize to the court and to the defendants for blocking their view to some extent, but I would like Miss Graham, if she would --

THE COURT: If counsel would like, you may stand over there outside the jury box where you can see.

Q To ask Miss Graham to come here please and meet the arrows that she previously drew concerning what the individuals did during the robbery.

THE COURT: If the defendants want to stand next to you, they may as well.

Q What I am asking, Miss Graham, you have got number 3 here and then you show an arrow here. Could you draw for the grand jurors the path that number 3 --

THE COURT: It is not a grand jury.

Q For the jury, the path that number 3 took from this point where the arrow starts.

A He came in here and he stood right there and he said something to the head teller who was in here, station number 1. Then the same position he pointed the gun at me. I was over here. I was looking directly at him. Then he told me to get back to the door, which is right here that leads to upstairs.

THE COURT: Mr. McCauley, can you see that chart?

JUROR NO. 1: Yes, your Honor.

THE WITNESS: Then he walked a little, he jumped over here and he robbed the girl here.

MR. DOYLE: Indicating number 2.

THE WITNESS: Right. He robbed the guy that was at number 3 and then the girl at 4. Meanwhile I was standing here still.

MR. DOYLE: Indicating a location behind number 4.

Q Would you put VG and then a 2 next to that.

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A Then he said I should come with him to my station where I worked. That was station 5 here.

Q Would you draw a line indicating the man's path from the number 3 to the tellers' station behind the cou ter.

MR. MAZUR: At this time the government offers its Exhibit 12 for identification into evidence.

MR. DOYLE: No objection, your Honor.

THE COURT: Received.

xx (Government's Exhibit 12 received in evidence.)

MR. MAZUR: At this time the government has no further questions of Miss Graham.

THE COURT: You may proceed.

CROSS-EXAMINATION

BY MR. DOYLE:

Q Miss Graham, in order to make sure that I understand your testimony correctly. On direct examination you testified about your observations of three individuals. You identified in court as Kim Cranshaw as a person who looks like one of those individuals. Is that individual the third individual that you described who you say jumped over the counter?

A Yes.

Q And with respect to your testimony that the person

seated at the far end of the table whose name is Mr. Claxton, that he looks like one of the individuals. Is that the second person, the second individual that you described in your direct testimony?

A Yes.

Q Now, would you tell me what you observed with respect to the first individual who you saw come into the bank, what he did?

A The first individual I did not see when he entered the bank. I saw him standing at the head of the line with his arms folded looking around.

Q Did you see anything after that as far as that individual is concerned?

A Yes. When the third individual came to the head teller and announced that it was a holdup, the man that was standing at the head of the line, he stepped out and went towards the platform. After that, I don't know what happened.

Q All right. By the platform, you are referring to the area shown on the diagram as officers' platform, is that correct?

A Right.

Q In the lower right-hand corner of the diagram which is Government's Exhibit 12 in evidence?

A Yes.

Q Now I am going to refer in my cross-examination to these individuals as number 2 and number 3 and I am going to direct the next question to number 2. I would like you to tell me what you saw number 2 do after you first saw him come into the bank?

A When the robbery was announced, he stepped out of the line and stood by the door, that's all I saw him do.

Q Did he do anything else other than stay by the door?

A I didn't see him do anything else.

Q Did you have your eyes on him all the time that the bank robbery was in progress?

A No.

Q How frequently did you have your eyes on him?

A After the robbery was in progress, I did not have my eyes on him.

Q So, you don't know in fact what he did after you saw him go to the door, correct?

A Correct.

Q Now, would you describe what you were doing at the time all of this started?

A I was standing at the door where number 3 said I should stand, looking.

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Q When you say the door, can you show me that on the diagram and show the jury the door on the diagram?

A Yes. Here.

Q You are indicating an area behind teller station number 4. Now, were you waiting on customers at that time?

A No. When he walked in -- he said I should stand there.

Q Did you have anything in your hands?

A No.

Q Now --

A Just my keys.

Q I want you to tell us, to the best of your recollection, the names of all of the other bank employees who were in the vicinity of your location behind teller station number 4 at the time that these events took place? Perhaps we could start with the head teller. You have mentioned the head teller. What is his name?

A Fenton Richards.

Q He was located where?

A Station number 1.

Q What about teller at station number 2?

A Gloria Price.

Q What about station number 3?

A Jeffrey Horton.

Q Jeffrey Horton?

A Yes.

Q Now, were those tellers open and servicing customers at the time the robbery started?

A No.

Q They were not?

A No.

Q Is it correct to say that each of those persons was in a better position to see individual number 3 than you were?

MR. MAZUR: Can we have a time frame, your Honor?

THE COURT: Yes.

Q At the time you first saw individual number 3?

A Yes, before he jumped the counter, yes.

Q That's right, because he was closer to them, was he not, than he was to you?

A Yes.

Q You were at an angle?

A No, when he entered first, I was here at station 5, at my station.

Q Indicating station number 5.

MR. CIAMPA: Your Honor, may I ask that the witness be asked to mark the chart about the teller's name.

She pointed to the record and it will be hard to tell where she marked it.

THE COURT: Mark it with some identifying markings.

MR. DOYLE: The witness has indicated with respect to station number 4, Rebecca, and is it correct you don't know her last name?

THE WITNESS: That's correct.

Q Going to the very beginning of the events that you described, is it your testimony, Miss Graham, that you were located at station number 5 when you made the first observation of the individuals that you have talked about?

A Yes.

Q Now, when was it that you found yourself located next to the door?

A When number 3 told me to get back there to the door.

Q And that you then moved back to an area which is behind station number 5 and a little bit to the left on the map, is that correct?

A Right.

Q Now, are there any other bank personnel or other persons whose names you know who were in the vicinity of individual number 3 at the location where he is shown here

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on the map at the beginning of the events in addition to the people that you have already listed?

A Yes. Cheryl Gribs.

Q Would you write her name down at the location where she was?

A Yes. This is her station.

Q Indicating station number 6?

A Yes. But she was not standing at her station at the time. She was running her work on this machine.

MR. DOYLE: Indicating the counter on the chart or in back of station number 6?

THE WITNESS: Right.

Q Anyone else that you can recall?

A No.

Q Now, with regard to individual number 3 and with respect to the red line that you drew indicating his course of passage at this time at the bank, would you tell us where he went, if you know, after he left station number 5?

A He jumped over and he went towards the door.

Q Now, did you see him get to the door?

A Yes.

Q What happened at the door?

A He said no one was to follow them or no one was

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to look where they were going because if they do they will be in trouble.

Q At that time what was individual number 2 doing?

A I don't know. Maybe he was -- I don't know.

Q All right, you don't remember.

At that time did you see what individual number 1 was doing?

A No.

Q Now, directing your attention to the day that you have testified two FBI agents came to interview you, which you said, if I recall your testimony correctly, took place about two weeks after the bank robbery and this is the second FBI interview that you have testified to.

THE COURT: I think she said September 10th.

MR. DOYLE: Your Honor, I believe that was the first of the interviews.

MR. MAZUR: The second one she testified to was September 30th, after refreshing her recollection.

Q Was that the date, September 30th?

A Yes.

Q Is that your recollection of the date?

A Yes.

Q All right. Now, at that time on September 30th when

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the FBI agents came to see you and showed you the photographs that you have identified here in court, you were not sure at that time whether or not the person that you picked out was any one of the persons you saw at the bank, correct?

A Which one? That is which picture?

Q Let me show you the pictures.

MR. DOYLE: Showing you the group of photographs which have been marked Government's number 9 in evidence. Handing them to you, Miss Graham.

Q My question is, at the time you were shown that group of photographs, in fact, you were not sure that any one of those individuals was a person that you had seen at the bank robbery, correct?

A Well, I was shown these photographs, I told them it was between these two.

Q So that there were two photographs there that looked like the person who was at the bank?

A Yes.

MR. DOYLE: May the record reflect that the witness has indicated Exhibit 9A in evidence and I will request that a second photograph in this series be marked as Defendant Cranshaw's Exhibit A for identification -- or we can mark it 9B.

MR. DOYLE: It is already in evidence.

THE COURT: 9B.

xx (Government's Exhibit 9B received in evidence.)

Q Miss Graham, the photograph on the left of you is 9A in evidence and the one on the right is 9B in evidence and let me ask you whether on September 30th when you looked at those photographs you felt that it was equally likely that one or the other one was one of the individuals at the bank?

A Well, after I looked at the photographs, I remembered the guy that jumped the counter was a young person, was much younger than A, much younger than this one.

Q But nevertheless --

MR. MAZUR: Can I ask which picture she picked up. Is it identified by a number?

MR. DOYLE: Look at the number on the back.

A 9B.

THE COURT: 9B was younger than 9A or the other way around?

THE WITNESS: The other way around.

Q But the fact is that on September 30th you did believe that both of those photographs looked like the person whom you saw at the bank, correct?

A Yes.

Q Now, at the time that the FBI agents interviewed

you on September 30th, did they also show you a photograph which has been marked Government's Exhibit 15 for identification?

A I don't remember now. They may have.

MR. DOYLE: Your Honor, I offer this in evidence at this time.

MR. MAZUR: Objection, your Honor. At this time I don't see the basis based on this witness' testimony.

THE COURT: There is no identification. Sustained.

Q Let me show you Government's Exhibit 15 for identification and ask you whether you have ever seen before today the individual around whom there is a circle in ink on that photograph?

A Yes.

Q When was it that you first saw that person?

A At the time of the robbery at the bank.

Q At the time of the robbery?

A Yes.

Q Was that the first time you had ever seen him?

A Yes.

Q Do you see that person in the courtroom here today?

A The person that sits to the left. It looks like the person.

Q In other words, the person, Mr. Cranshaw, sitting

at the end of the table looks like the person depicted in that photograph?

A He looks like the person that was in the bank at the time.

Q Let me ask you whether -- withdrawn.

Now, referring to individual number 3, that is the person who jumped over the counter, Miss Graham. Does that person resemble an individual who on several occasions had come to the bank to purchase money orders and on each occasion offered less money than the value of the money order?

A I had told them that he looked like that person also.

Q But nevertheless are you now clear in your testimony today that the first time you saw the individual depicted on Government's Exhibit 15 for identification was on the day of the bank robbery?

A Would you please rephrase the question?

Q Are you now clear in your recollection that the person shown in Government's Exhibit 15 for identification, that the first time you saw that person was on the day of the bank robbery?

A Yes.

Q Now, at any time, Miss Graham, prior to your testimony here today, did you observe any lineups of

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individuals, physical lineups?

A Yes.

Q To the best of your recollection, did you observe any lineup in which Mr. Cranshaw, who is the person sitting on the end of the table nearest me, was present?

A No.

Q Now, about how tall was individual number 3, to the best of your recollection?

A About five-nine, five-ten.

Q He was wearing, as you described him in your direct testimony, a cap, a wig and dark glasses, correct?

A Right.

Q For that reason it was difficult for you to identify that person when you were shown photographs on September 30th by the FBI agents, correct?

A Well, when I was shown the photographs I said it looked like the guy, to the best way I could remember.

Q But because of the attire of the individual, the clothing that he was wearing, and the way his face was covered up by the various items that you described, the wig, the hat and the glasses, it was difficult to identify him on September 30th, correct?

A Yes.

Q And it is difficult today to do that, isn't it?

A Yes, right. That's correct.

Q So that you are not positive?

A No, I am not positive.

MR. DOYLE: I have nothing further, your Honor.

THE COURT: Mr. Ciampa.

CROSS-EXAMINATION

BY MR. CIAMPA:

Q Good afternoon, Miss Graham. My name is John Ciampa and I represent Walton Claxton.

I believe you testified, Miss Graham, did you not, that Mr. Claxton looks like the man who was wearing the white hat, is that right?

A That's correct.

Q In connection with Mr. Doyle's cross-examination, you used some numbers, individual number 2, individual number 3. Which individual was wearing the white hat?

A Number 2.

Q 2. Had you ever seen an individual wearing the white -- withdrawn.

Had you ever seen the individual wearing the white hat at any time prior to the date of the bank robbery in this case?

A No.

Q And you saw that individual with the white hat

enter the bank for the first time at about 2:30 on the day of the robbery, is that correct?

A Yes.

Q That's before the robbery took place, is that right?

A Right.

Q What were you doing at that time?

A I was at my station.

Q And you were a teller?

A Yes.

Q And you were waiting on customers?

A There was no customer to be waited on.

Q No customers.You happened to be looking at the door and this man with the white hat came in, is that right?

A Well, I happened to look that way and this customer of ours --

Q Is that right, you happened to be looking at the door when the man with the white hat came in, so you saw him come in, is that right?

A Yes.

Q When he came in, did he have anything in his hand?

A I did not see anything in his hand.

Q Was he wearing a disguise?

A No.

Q Did he have a wig on?

A Not that I could see.

Q Did he have sun glasses on?

A Yes.

Q Were they large sun glasses?

A Yes.

Q Did the white hat cover his head?

A Yes.

Q Did the brim of the white hat cover any part of his forehead?

A Yes.

Q Did the sun glasses cover his eyes?

A Yes.

Q Were you able to see through the sun glasses?

A No.

Q Did the sun glasses cover any part of his face other than his eyes?

A They were big glasses.

Q So they extended down below his eyes, would you say?

A To about here.

Q Indicating below the cheek bone?

A Yes.

MR. MAZUR: Your Honor, I'm not sure I would abide by that indication.

THE COURT: Show me where you did.

THE WITNESS: Down here.

THE COURT: I would say about level with the cheek bone. It might depend on the angle of your view. But I would say just about level.

Q Did you keep the individual in the white hat in constant view after you saw him enter the bank?

A Yes.

Q What did you see him do?

A He just stepped over the rope and he stood in line until number 3 and now --

Q You saw him stand in what you call the common feed line, is that right?

A Yes.

Q These are people, Mrs. Graham, who are about to be waited on by all the tellers, is that right, in other words, they say next and you go to the next available teller, is that right?

A Yes.

Q Now how long was that common feed line when you saw the individual in the white hat get in line?

A How long was it?

Q Yes.

A It was not long.

Q More than five individuals?

A No. Maybe -- the first guy, number 1, with his arms folded, he was standing in the front of the line. I think maybe another customer could be behind him.

Q The man in the white hat could have been the third, is that right?

A Yes, if he had walked all the way up.

Q Were you waiting on customers that were fed to you from the common feed line?

A No.

Q You were not. Was there anything special about the man in the white hat which would have called your attention to him when he entered the bank?

A There was nothing special, but he was walking behind a customer of ours which I know, a black customer, and I thought that was his son.

Q You thought your known customer had a son who was the man in the white hat?

A Yes. They came in about the same time.

Q Who is the known customer you are referring to?

A Mr. Herst.

Q How do you spell that?

A H-e-r-s-t.

Q Is he a black man?

A Yes.

Q About how old is he?

A He is a senior citizen, bout 63.

Q After the individual with the white hat stepped in the common feed line, the next thing that happened is that another individual announced that it was a holdup, is that right?

A Yes.

Q Now, at no time did you see the individual with the white hat hold a gun, is that right?

A No, I didn't see him with the gun.

Q The individual who announced the holdup was wearing a hat, is that right?

A Yes.

Q What colot was that hat?

A It was a cap, a black cap.

Q How many people in all were in the bank -- withdrawn.

How many bank robbers were in the bank?

A Three.

Q Were they all wearing hats?

A Not that I can remember.

Q They were not wearing hats?

A One was not.

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MR. CIAMPA: May I have the court's indulgence for a moment?

THE COURT: Yes.

(Pause)

Q I show you Government's Exhibit 1 which you previously identified and specifically sheet 1B, the first two photographs on top.

I ask you whether the individual in the far right black circle in those photographs is an individual that was involved in the bank robbery?

A Yes.

Q Is he wearing a hat?

A Yes.

Q Is that the man in the white hat?

A No.

Q Is that the man in the black hat?

A No.

Q That's another individual with a hat, is that right?

A Yes.

Q Is it the same kind of a cap as the man in the white hat was wearing?

MR. MAZUR: Objection, I think the pictures speak for themselves.

MR. CIAMPA: I am asking about her recollection.

THE COURT: Yes. Overruled.

A My recollection, I don't remember.

Q In fact you don't remember that he was wearing a hat at all until I showed you this photograph?

A That's right.

Q When you hear the man in the black hat announce th at this was a holdup, did you shift your gaze to that man?

A Did I shift my gaze?

Q Your eyes, did you shift your eyes to the man that announced that this was a holdup?

A I was looking at him before he announced the holdup.

Q When he announced that this was a holdup, did he have a gun in his hand, the man in the black hat?

A Yes.

Q When you were looking at the man in the black hat holding the gun who announced this was a holdup, were you able to look at the man with the white hat also?

A No.

Q When is the next time after that moment that the man with the black hat announced this is a holdup that you saw the man with the white hat?

A He stepped out of the line.

Q This afterwards?

A When he announced this was a holdup, yes, that's the time he stepped out of the line.

Q What did he do?

A He stood by the door.

Q He went for the exit, is that right?

A Right.

Q Did he have any gun with him?

A I did not --

Q At that point.

A I didn't see one.

Q Did he have any bag in his hand?

A No, I didn't see one.

Q Did he take any money?

A I didn't see him take any.

Q You just saw him go for the door, is that right?

A I saw him step down and stood by the door, that's correct.

Q What else did you see him do at any time?

A Nothing.

Q Is it your testimony that he left before the man with the black hat left?

A I may have.

Q What do you recall today? Do you recall the man with the white hat left the bank before the man with the

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black hat left the bank?

A Today, yes, the way I can remember it, I would say he did leave before.

Q How about the third individual that you recall not having a hat, but now say may have had -- well, you say he had a cap on. I don't know how to refer to him. Let's say the third individual, not the white hat man and not the black hat man, but the third individual who you identified in the photograph who had a cap, also a beach hat. Did he leave before, with or after the man with the black hat?

MR. MAZUR: Your Honor, I'm not clear which man we are talking about.

MR. CIAMPA: I will withdraw the question.

Q Showing you Government's Exhibit 1B, again. You testified earlier that this individual in the second black circle to the right wearing a beach cap was not the individual with the black hat and not the individual with the white hat but was in fact a bank robber who was with them, is that right?

A Yes.

Q That's the man I'm talking about. Did he leave with the man with the black hat at the same time?

A The best way I can remember it, he left before.

Q What did you see him do, this third individual?

A He was standing at the head of the line and when the robbery was announced, he just walked towards the platform. That's all I seen him do.

Q The third individual?

A Yes.

Q How would you describe the cap you have just seen in the photograph?

MR. MAZUR: Are we now talking about the man who went --

THE COURT: I don't know which one we are talking about.

Q I'm talking about neither black cap or white cap. The third cap. How would you describe the man's cap?

THE COURT: In what relationship There are many ways of describing it. Color, size, what?

MR. CIAMPA: I would like to hear it all.

MR. MAZUR: She has already testified she does not remember whether he was wearing a cap or not. I don't see how he can expect her to describe a cap that appears in the photo.

THE COURT: If she can't remember, she can't. Do you remember?

THE WITNESS: No.

THE COURT: Next question.

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Q How would you describe the white hat?

A It was a beach cap.

Q Was it similar to the cap you saw on that third man you just saw in that photograph?

A I don't know. Because I don't remember a cap on a third man.

Q I'm not asking you your recollection, now. I'm asking you and showing you Government's Exhibit 1B and asking you if the cap on the white capped man was the same as that kind of a cap?

MR. MAZUR: Objection.

MR. CIAMPA: Indicating first and second photographs Government's Exhibit 1B.

THE COURT: Sustained. The jury can draw that conclusion. If you want to test her memory whether she thinks they look alike, all right,you can put that question to her.

Q Do those two caps look alike to you now?

THE COURT: Overruled.

A I don't know, they do, yes.

Q Today, you testified that Walton Claxton looks like the man in the white hat, is that right?

A Yes.

Q That statement is based upon comparisons, is

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it not, of photographs that you have made in the past, is that right?

A No. I'm thinking like I can remember at the time of the robbery.

Q You did see photographs, for instance, that were shown to you by the FBI of persons and you compared those photographs with other photographs, did you not?

A Yes.

Q That was more recent to the time of the robbery, wasn't it, when you saw the first photographs, is that right?

A Yes.

Q And you saw -- on a second occasion you saw photographs which you compared, is that correct?

A No.

Q On September 1, 1976, did Special Agent Wichner visit you and did he show you a photograph of the man in the white hat?

A Yes.

Q On September 10, 1976, did Special Agent Wichner visit you and show you a photograph of a man in a white hat as well as some other photographs or suspects?

A Yes, he showed me.

MR. MAZUR: Your Honor, I don't know how she knows what suspects are.

MR. CIAMPA: She said yes, your Honor, and I don't understand the objection.

MR. MAZUR: I move to strike the answer.

THE COURT: Yes, strike the answer.

Q He showed you photographs of the man in the white hat and photographs of other individuals?

A On September --

Q September 10th?

A Yes. He showed me a spread of photographs.

Q And he showed you a photograph of the man in the white hat, you remember saying that, before the objection?

A I don't remember if he showed me that on that day.

Q Do you remember saying so a few seconds ago before the objection?

A I may have.

Q You're not sure what you said a few minutes ago?

MR. MAZUR: Your Honor, the testimony was struck because the question was incomprehensible.

THE COURT: Yes. Reframe it.

Q Did he or did he not shown you a photograph on September 10th of the man in the white hat?

A I don't remember.

THE COURT: We will take a short recess now.

(Jury excused from the courtroom.)

* * *

that answer?

A Yes.

MR. CIAMPA: No further questions.

REDIRECT EXAMINATION

BY MR. MAZUR:

Q Miss Graham, you testified as to approximate heights of the man in the black hat who jumped over the counter and the man in the white hat. Did you have occasion to see what types of shoes the men were wearing during the bank robbery, whether it was sneakers or street shoes?

A The man who jumped the counter I think he was wearing not sneakers but soft shoes.

Q The other man, did you see his footwear?

A No.

MR. CIAMPA: Your Honor, I will object as to form. Which other man, there are two of them.

Q The man in the white hat, excuse me, did you see his footwear?

A No, I didn't.

Q You were asked whether you ever saw a lineup which included a man in the white hat, whether you ever picked him out of the lineup. Did you ever see a lineup with the man in the white hat?

A No.

Q You were asked whether on September 10, 1976, when you were shown a photo spread -- withdrawn.

You were asked whether you saw any photographs of the man in the white hat on that day and I believe you said you weren't sure.

A Yes.

Q Were you ever shown any surveillance photographs of the man in the white hat on that day?

A I don't remember.

Q But you were shown the six photographs in front of you?

A Yes.

Q And you did pick out the photograph number 7A?

A Yes.

MR. CIAMPA: Objection to the leading, your Honor, and I move the answer to be stricken.

THE COURT: Yes, strike the answer.

Q Miss Graham, did you pick out one of those photographs?

A Yes.

Q Which one did you pick out?

A 7A.

Q Miss Graham, you have before you Exhibits 9A and 9B and you testified on cross-examination when you were

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shown the photo spread on September 30th, you hesitated between those photographs as which one depicted the man who jumped over the tellers' counter, is that correct?

A Yes.

Q Which one did you ultimately choose?

A This one.

Q Would you tell the jury which one that is?

A 9A.

Q Why did you choose that one?

A Because he was much younger than this 9A and I remembered it was a young man.

Q On cross-examination you were read a portion of testimony from a hearing. Do you recall that subsequent to giving that testimony you were asked a question by the court.

"Not these people. Do you see the man in the white hat" and that you gave the answer "I see a man that looks like the man in the white hat." The court asked you "Which one?" And you say "The first man." The court, "First man where?" The witness, "From the right." The court "Let the record reflect that she has identified Claxton for the second time." Do you recall that?

A Yes.

MR.MAZUR: No further questions, your Honor.

* * *

(Witness excused)

MR. MAZUR: The government calls Samuel Wichner.

S A M U E L M. W I C H N E R, called as a witness, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MAZUR:

Q Mr. Wichner, by whom are you employed, sir?

A Federal Bureau of Investigation.

Q What is your position with the FBI?

A Special agent.

Q How long have you been a special agent?

A Just over six years.

Q Were you a special agent on August 30th of this year?

A I was.

Q Did there come a time in the course of your duties that day when you investigated a bank robbery?

A I did.

Q Where was that robbery?

A At 86th Street and York Avenue in Manhattan, the Chemical Bank.

Q In the course of your investigation of that robbery, did you obtain certain surveillance photographs

from that bank?

A I did.

Q Are those photographs which you have before you -- could you tell the jury what those photographs are that you have before you?

A These are prints made from the bank surveillance film which was taken from the cameras subsequent to the robbery of this bank on August 30, 1976.

Q In the course of your investigation did you meet a woman named Velma Graham, one of the tellers at the bank?

A I did.

Q Did you ever have occasion to show her any photographs?

A I did.

Q Did you ever have occasion to show her a spread of photographs?

A I did.

Q When was the first occasion, do you recall?

A If I could see the photos, the date is on the back. I believe September 10th was one of the dates.

Q I show you Government's Exhibit 7 for identification and ask you if that refreshes your recollection -- in evidence, and ask you if that refreshes your recollection as to the date you showed her a spread?

A Yes. This is the spread of photographs which I showed to Velma Graham on September 10, 1976.

Q Referring specifically to Exhibit 7A, can you tell the jury who that's a picture of?

A This is a photograph of Walton Claxton.

Q You have before you what has been marked Government's Exhibit 9 in evidence. I ask you if you can tell the jury whether or not you ever showed those to Velma Graham?

A Yes. This is a spread of photographs which I showed to Velma Graham on September 30, 1976.

Q Referring specifically to Exhibit 9A, can you tell the jury who that is a photograph of?

A Yes, this is a photograph of Kim Cranshaw.

Q Mr. Wichner, did there come a time during the course of your duties on October 7th of this year when you received -- you or the FBI received a call from the New York City Housing Authority Police Department?

A That's correct.

Q Without telling us what the substance of that call was, but as a result of that call did you do anything?

A I did. I responded, along with another agent, Terry Carney, to the Fort Greene housing project Police Department located in Brooklyn, New York.

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Q When you got there what happened?

A I was greeted by Housing officers who informed me that they had arrested Kim Cranshaw.

Q Do you recall the name of those officers?

A I do.

Q What were their names?

A Police Officer Jack Lyons and Police Officer Michael Taylor.

Q Then what happened?

A We had a short conversation, after which time I requested that Mr. Cranshaw be turned over in federal custody to myself and Agent Carney, along with his personal effects, after which time they agreed to that. I then placed Mr. Cranshaw under arrest, advised him of my identity and told him not to make any statements at that time.

Q Did you tell him what he was under arrest for?

A Yes, I did.

Q What did you say?

A The robbery of the Chemical Bank, 86th Street and York Avenue, which occurred on August 30, 1976.

Q You have now before you a series of photographs marked Government's Exhibits 13 and 13A in evidence. Can you tell the jury what they are?

A These are, I believe, 5 technicolor photographs

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which were turned over to me by Police Officer Lyons as part of Mr. Cranshaw's personal property on October 7, 1976.

MR. MAZUR: At this point, your Honor, we should approach the side bar pursuant to your prior direction.

THE COURT: All right.

(At the side bar)

MR. MAZUR: Your Honor --

THE COURT: I take it you want to show a subsequent robbery?

MR. MAZUR: That's correct.

THE COURT: I will permit it.

MR. DOYLE: I have an additional legal objection to Mr. Cranshaw's statements coming into evidence, which is that he told Mr. Lyons that he did not wish to make a statement. Under the Miranda case it is quite clear that once a defendant states that he does not wish to make a statement, that there be no further questioning.

MR. MAZUR: May I respond, your Honor?

THE COURT: Yes.

MR. MAZUR: Subsequent to that the defendant was again advised of his rights pursuant to Miranda.

THE COURT: Again this is one of those points that should have been made before trial.

(In open court)

THE COURT: We will take a recess. The jury may take a recess.

(Jury leaves)

THE COURT: All right, Mr. Doyle, I will hear you. Again I have none of the facts before me pertaining to this.

MR. DOYLE: At the hearing what Lyons said on cross-examination was as follows, at page 138 of the hearing.

"Q Did you interview Mr. Cranshaw about the bank robbery or bank robberies that you have testified you had heard that the FBI wanted him for?

"A No, I did not.

"Q Did you advise him of his rights?

"A I did.

"Q Did he say that he understood his rights?

"A Yes. I read each right from an arrest report and I asked him to answer them, answer yes or no. I read each of the rights and he answered yes to each one, but he made no statements anyway.

"The Court: What did you say to him? Tell us what you said, not I read his rights."

Then he goes through the specific rights.

Then he was asked, "Did you ask him any questions after stating that to him and getting those

* * *

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criminal cases and they just aren't able to be in more than one place at one time, even for Judge MacMahon.

So that I see nothing unreasonable there at all. Certainly Mr. Akerman had to be briefed by the FBI agent in order to conduct an intelligent interview. He did that with dispatch. After he finished it he turned him over to pre-trial services. Certainly no unreasonable delay there. All of these services are for the benefit. It is mandated in this court for that end.

Magistrate Jacobs certainly was entitled to have a lunch hour. Judicial officers have to eat also. It is plan that he wasn't available at the time that the pre-trial services finished at 1 P.M. and got to this arraignment at 2:30.

I don't see any unnecessary delay that would preclude the admission of this confession which was, after all, given freely and voluntarily after full warning, all the Miranda rights, with no overreaching of any kind.

I deny the motion.

(Jury present)

THE COURT: Proceed.

MR. MAZUR: The government calls Samuel Wichner.

S A M U E L W I C H N E R, called as a witness, having

been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MAZUR:

Q Mr. Wichner, in the course of your investigation of the Chemical Bank robbery which took place on August 30th, did you on September 10th have occasion to interview Velma Graham?

A I did.

Q What did you do on that day when you spoke to her?

A I reviewed her recollection of the robbery and I then showed her a series of photographs.

Q You have before you Government's Exhibits 7 and 7A in evidence. Can you tell the ladies and gentlemen of the jury what they are?

A Yes. This is a series of six photographs of black males wearing glasses which I displayed to Velma Graham on September 10th.

Q Can you tell the ladies and gentlemen of the jury what happened when you displayed those photographs?

MR. DOYLE: Objected to as hearsay.

MR. MAZUR: Not being offered for the truth, your Honor. Under 801(d)(1)(c) it is entitled to come in.

MR. DOYLE: I think that rule applies only to the

person who observed the individual, not a second party who had a conversation with that person. I think this is hearsay as distinguished from what is covered in the rule, your Honor.

THE COURT: I think so. Sustained.

MR. MAZUR: Your Honor, if I may be heard for a moment. It is being offered to buttress the identification offered by Miss Graham. Not being offered to prove that this defendant was in the bank robbery. It is being offered to prove that she made an identification and the circumstances surrounding that identification.

THE COURT: You can ask what happened, but you asked him for a conversation.

MR. MAZUR: Not asking for a conversation, your Honor. I am asking for what happened when he presented those photographs to her.

THE COURT: All right. What did he observe.

Q What did you see happen when you presented Exhibit 7 to her?

A I saw Miss Graham pick -- immediately one of these photographs as being an individual who she recalled being in the robbery.

Q Which one did she pick?

A She picked this photograph right here (indicating).

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Q Indicating Government's Exhibit 7A in evidence, is that correct?

A Yes.

Q Did you again have occasion to speak to Miss Graham on September 30, 1976?

A I did.

Q What did you do on that day?

A I again reviewed her recollection of the robbery and what she observed and then I showed her another set of six photographs.

Q You have before you Government's Exhibits 9, 9A and 9B in evidence. Can you tell the ladies and gentlemen of the jury what they are?

A Yes. This is another series of photographs of black males and these are photographs which I displayed to Mrs. Graham.

Q On September 30th?

A September 30th.

Q What happened when you displayed those photographs? Don't tell us what she said. tell us what she did.

A They picked one of these photographs as being an individual whom she recalled vaulting the tellers' counter the day of the robbery, August 30th.

Q Which one did she pick?

A This one (indicating Exhibit 9A).

Q Did there come a time on October 7th of this year when the FBI received a call from the New York City Housing Authority police at the Fort Greene projects in Brooklyn?

A Yes.

Q As a result of that call what did you do?

A I responded, I drove from Manhattan with another agent to the Fort Greene projects in order to arrest the individual who they had picked up, who was Mr. Cranshaw.

Q Now, do you see Mr. Cranshaw in the courtroom here today?

A I do.

Q Would you point him out, please?

A He is the individual to your left sitting at the table with his hands on the table and his chin in his hands.

MR. MAZUR: Indicating the defendant Cranshaw, your Honor.

THE COURT: Yes.

Q What time did you get to the Fort Greene housing project approximately?

A Somewhere around 6 P.M.

Q What time did you take custody of the defendant Cranshaw, approximately, according to my arrest log,

6:45 P.M.

Q Now, did you have any conversations with Mr. Cranshaw at that time at the Fort Greene housing project?

A Yes.

Q What did you say to him and what did he say to you?

A I identified myself as a special agent by displaying my credentials. I told him my name. I told him he was under arrest for bank robbery. The bank robbery was the Chemical Bank at 86th Street and York Avenue. I told him that he was in federal custody; that we were going to be going to the FBI headquarters in Manhattan and that I did not want him to make any statements at that time until we left the precinct.

Q Did you subsequently leave the precinct?

A Yes.

Q Prior to leaving the precinct did you obtain anything?

A Yes.

Q What did you obtain?

A I obtained the personal effects of Mr. Cranshaw which he had with him when the housing police arrested him.

Q You have before you Government Exhibits 13 and 13A in evidence. Can you tell the ladies and gentlemen of the jury what those are?

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A These are five technicolor photographs which were given to me at the Fort Greene housing project by Police Officer Lyons prior to me placing Mr. Cranshaw under arrest. Lyons told me that these photographs were on Mr. Cranshaw --

MR. DOYLE: Objection to what Lyons told him, your Honor.

THE COURT: Sustained.

Q Without telling ---

THE COURT: Strike it.

Q What did you do after you obtained Cranshaw and those photographs?

A We left the precinct.

Q Where did you go?

A We drove in a bureau automobile from Brooklyn to Manhattan.

Q Where did you stop?

A We made a stop at McDonald's restaurant at East 70th Street and Second Avenue in Manhattan.

Q During the automobile ride from the Fort Greene projects in Brooklyn to McDonald's on the East Side of Manhattan, was there any conversation between you and Mr. Cranshaw?

A Yes.

Q And would you tell the ladies and gentlemen of the

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jury what you said to him and what he said to you during that car ride?

A Yes. I again told Mr. Cranshaw that he was under arrest for bank robbery. I immediately orally advised him of his rights, in that I told him that he could remain silent, he had a right to remain silent; that anything he said could be used against him in a court of law; that he had a right to an attorney; that if he could not afford an attorney the government would provide one. I told him that if he wanted to have an attorney present during questioning, he could; that he could stop answering questions at any time.

I also told Mr. Cranshaw that I felt that it would be in his interests to cooperate with the FBI in this investigation as a result of the fact that our investigation not only concerned the robbery of 86th Street and York Avenue Bank but it also concerned other bank robberies and that there were other individuals involved. I told him the fact there was a large amount of money that was involved in these robberies and we were very interested. I told him if he would cooperate with me, that I would convey the fullest extent of his cooperation to the Assistant United States Attorney who would be handling the case and that although I personally, on behalf of the FBI, could not

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promise him anything, it would be up to the United States Attorney's office as to what they would do for him in terms of talking to the judge who would be involved with the case.

Q Now, did you promise him anything favorable that would happen to him if he cooperated?

A The only thing that I promised him was that I would personally in Mr. Cranshaw's presence the next day tell the Assistant United States Attorney exactly to what degree he testified.

Q Did you threaten him with anything bad that would happen if he didn't testify?

A No.

MR. DOYLE: Excuse me. The witness has said testified and I think he means speak.

Q If he did cooperate with your investigation.

A I would convey to the U.S. Attorney in his presence.

Q Did you threaten him with anything that would happen if he did not cooperate with your investigation?

A No.

Q Did you hear anybody else in that car promise or threaten him with anything?

A No.

THE COURT: How long were you in that car?

THE WITNESS: Approximately 45 to 50 minutes.

THE COURT: What were the traffic conditions at that hour?

THE WITNESS: Well, as best I recall we had the normal holdup going over the Brooklyn Bridge and then, of course, we spent five to ten minutes waiting at the McDonald's restaurant.

THE COURT: Where is this Fort Greene project, whereabouts in Brooklyn?

THE WITNESS: Fort Greene project is located approximately one block north of Myrtle Avenue. It is actually St. George and Auburn Streets. It is about a five to ten-minute ride, depending on traffic, from the Brooklyn Bridge.

THE COURT: From the Brooklyn exit?

THE WITNESS: The Brooklyn Bridge. It is in Brooklyn, New York, your Honor.

THE COURT: I am trying to find out how long it takes you after you get off the bridge to the project.

THE WITNESS: Five to ten minutes depending on traffic.

Q Mr. Wichner, during the car ride to McDonald's did the defendant make any statements when you advised him of his constitutional rights?

A I asked him questions about one of the individuals

we were concerned with and he told me that he was very fearful of this individual.

Q What did you say to him and what did he say to you?

A I showed him this particular photograph right here, which has been marked Government's Exhibit 13A and asked him if he knew that individual.

Q What did he say?

A At first he said no.

Q Are we still talking about in the automobile?

A We are still in the car.

Q What other conversation was there in the car?

A I believe that he told me that he did later know this individual and he described him by the nickname Bubby.

Q Anything else that was said between you and this defendant in the car?

A I asked him if this individual he described as Bubby was Frank Lewis and he said yes.

Q That's in the automobile?

A Yes.

Q Now, was this before or after you had advised him of his constitutional rights?

A This was all after I advised him orally of his rights.

Q And then he made the statements you described?

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A Yes.

Q Is there anything else you can recall that was said in the car before you got to McDonald's?

A Yes. I restated my feelings about him cooperating, as I previously testified, and that I would convey the extent of his cooperation to the Assistant United States Attorney. I said that I would like him to think about what we have talked about and then after we get back to the office and we have something to eat we will talk about all these bank robberies and these people that we are interested in.

Q What happened when you got to McDonald's?

A When we got to McDonald's I asked Mr. Cranshaw if he would like a hamburger and a coke and he said that he wanted more than a hamburger and a coke. I said "What do you want?" He said that he wanted, as I recall, two big Macs, two french fries, a large coke and possibly pie, I don't recall. But I recall that it was a little bit too much money for me to put out of my pocket and I said "If you are interested in that much food you have $94 on you, you pay for your dinner." He said "Fine."

We took in his presence out of the $94, four one dollar bills out, which Agent Carney took into the store and bought his meal with and our meal, and Agent Carney then returned to the car and told me that his food was

approximately $4.25. Agent Carney put the quarter out. At that point we drove around the corner and parked in the bureau garage adjacent to the building.

Q Where is the FBI headquarters located in Manhattan?

A 201 East 69th Street, which is just east of Third Avenue.

Q When you got to FBI headquarters what happened?

A Well, we pulled up in front of the building. We had to get the garage unlocked. We pulled the vehicle in the garage. We took Mr. Cranshaw from the vehicles with the food and all the briefcases that we had and we went into the building, took an elevator up to the -- well, Mr. Cranshaw I believe was logged in at the lobby on the main floor as you come in, and then we took an elevator up to the 7th floor where we went to the interviewing area. We sat down. Mr. Cranshaw was unhandcuffed and then I believe he was handcuffed to a chair with one hand and the other one being free. We distributed the food. Shortly after distributing the food Mr. Cranshaw was presented with the FD395 form, which is a written advice of rights form.

Q You have before you Government's Exhibit 14 for identification. What is that?

A This is the federal form for interrogation advice of rights which Mr. Cranshaw executed.

Q You say he executed it. Did you read it to him first?

A I did not read it to him. I gave him the form and I asked him if he could read or write. He said I could. He told me he had attended a year of college at Howard University. After which time I gave him the form, he read it and then he signed it.

Q And that's the form?

A That's the form.

Q How do you recognize that as the form that he signed?

A This is the original form. It has my signature in a picture and date on it and it also has Agent Carney's signature and date on it and Mr. Cranshaw's signature.

Q Does it reflect the time all this took place?

A It does. Well, it reflects a time, but as I have previously testified in hearings the time is incorrect on this form.

Q What time does the form say?

A The form says it was given to him at 6:18 and he signed it at 6:22 P.M.

Q What is your best recollection of when the form was given to him?

A My best recollection would be that the form

was given to him some time after we arrived at FBI headquarters, which would be after 7:30. Somewhere between 7:30 and 25 or 20 after 8.

MR. DOYLE: No objection.

THE COURT: Received.

xx (Government's Exhibit 14 received in evidence.)

Q Subsequent to his executing Government's Exhibit 14 in evidence, did you have further conversations with Mr. Cranshaw?

A Yes.

Q And what did you say to him and what did he say to you?

A I showed him an 8 by 10 photograph, a positive print, taken from bank surveillance film which was obtained after the robbery of the Chemical Bank at 86th Street and York Avenue on August 30th.

Q You have before you Government's Exhibit 15 for identification. Can you tell the jury what that is?

A This is the 8 by 10 photograph wich I showed Mr. Cranshaw.

Q And what did you say to him when you showed it to him?

A I told him that this was a photograph taken by the bank surveillance cameras that day during the robbery

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and I gave him the photograph to look at and I circled an individual in the photograph, put a little arrow next to the circle and I asked him if it was him.

Q What did he say?

A He said it was him. I asked him if he would write on the back of the photograph that this is a picture of me and sign his name.

Q Did he do that?

A He did.

MR. MAZUR: Government offers Exhibit 15 for identification.

MR. DOYLE: No objection, your Honor.

xx (Government's Exhibit 15 is received in evidence.)

MR. MAZUR: May I present this to the jury, your Honor?

THE COURT: Yes.

(Pause)

Q Did you have any other conversation with Mr. Cranshaw concerning the Chemical Bank robbery?

A Yes.

Q What was that conversation?

A I showed him other photographs of individuals taken during the robbery and asked if he knew them --

MR. CIAMPA: Objection.

THE COURT: Overruled.

Q What did he say?

A I showed him other photographs which were taken by surveillance cameras and asked him if he knew those individuals. One person he said he did not know and one person he said he did know but not by name.

Q Well, without telling us anything more about that, did he discuss any other individuals that participated in a robbery?

A Yes.

Q That were not in the surveillance photos?

A Yes.

Q What did he say about that?

A I again showed him this photograph which as been marked 13A and who he had told me was Bubby, and I asked him again, "Is that Frank Lewis?" He said "Yes."

I asked him what he knew about Frank Lewis, and he was very, very fearful of Frank Lewis. He said that he knew Frank Lewis had done a prior bank robbery and had been in jail in federal custody for the bank robbery. He also told me that on one occasion he traveled to Chicago with Frank Lewis and that they were going to plan a bank robbery in Chicago. He also told me that on an occasion he had an argument with Frank Lewis about money, proceeds of some

robbery, and that as a result of this argument that he had Lewis hit him over the eye. Again he told me that he was very fearful of this man, Frank Lewis.

He also told me that Frank Lewis was the getaway car driver during the robbery at 86th Street and York Avenue and he had -- that Frank Lewis had drawn these individuals together to do this robbery.

Q Government Exhibit 13A reflects two individuals. Which did he say was himself and which did he say was Frank Lewis?

A He told me the individual who was on the left side of the picture wearing a white suit was Frank Lewis and the individual on the right side of the photograph with a hat and whose right leg was on the bumper of a car was himself.

MR. MAZUR: May I present this to the jury, your Honor?

MR. DOYLE: It was received subject to connection, your Honor.

MR. MAZUR: I submit that the connection has been established by the testimony that he robbed the bank with the other gentleman.

THE COURT:Yes, I think so.

Q Now, did you have any other conversation with Mr.

Cranshaw concerning the Chemical Bank robbery?

A Yes, I asked him what his role in the robbery was. He said he had vaulted the tellers' counter.

Q Did he say anything else about hiw role during that robbery that you can recall?

A No.

Q Now, did you have any conversation concerning any other bank robberies?

A Yes.

Q What were those conversations, can you tell the jury?

A Yes. I showed him three photographs which were taken by bank surveillance cameras in the robbery of the Manufacturers Hanover Trust Company at 2084 Linden Boulevard in Brooklyn which occurred on September 8, 1976.

Q You have before you Government's Exhibit 16 for identification. What is Government's Exhibit 16?

A These are prints or frames from the robbery which I described at Manufacturers Hanover Trust Company, 2084 Linden Boulevard, September 8, 1976.

Q Are those the pictures you showed to Kim Cranshaw on October 7th, the day of his arrest?

A These are the same pictures although these particular prints may not be the same ones.

Q What did he say, if anything, about the first individual depicted?

A The first individual depicted on a montage photograph showing a full face view and a right side view of an individual running with a white bag and dark clothing. He stated that he met this individual prior to the bank robbery but he did not know his identity.

Q The second picture in that three-picture set.

A The second picture, which is a single photograph, depicting an individual with a dark hat, dark clothing, holding what we believe to be a gun, he identified as himself in that robbery.

Q The robbery at 2084 Linden Boulevard?

A Correct.

Q And the third individual, did he tell you who that was?

A The third individual, who is depicted as one individual in the photograph of a person wearing a white suit, sun glasses and some sort of a coat, he had identified as Frank Lewis and he told me that Frank Lewis was the individual in the robbery who had exchanged gun fire as they left the bank.

MR. MAZUR: Government offers Exhibit 16 for identification into evidence.

MR. DOYLE: Objected to on the ground that

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your Honor has previously ruled on.

MR. CIAMPA: No objection.

THE COURT: Received. Objection overruled.

xx (Government's Exhibit 16 is received in evidence.)

Q Mr. Wichner, which one was it that Mr. Cranshaw said was himself during the 2085 Linden Boulevard robbery?

A The second photograph.

MR. MAZUR: May I pass this among the jurors, your Honor?

THE COURT: Yes.

Q Did Mr. Cranshaw tell you anything else about any other bank robberies?

A Yes.

Q What did he say?

A Well, I showed him another photograph taken in the robbery of the Prudential Savings Bank. I believe the address is 418 Myrtle Avenue, which occurred during the summer. It is a photograph of a videotape surveillance film taken during the robbery of that bank, and he, Mr. Cranshaw, told me that was a picture of him and that he had committed that robbery, that he had done that robbery because his mother needed money. After he got that money from that robbery, he walked down to the Fort Greene projects

and gave that money to his mother. He said that he acted alone in that robbery.

This is the --

Q You have before you Government's Exhibit 18 for identification. Please tell the jury what that is.

A This is the photograph of the videotape surveillance film which was taken during that robbery.

Q Does looking at that robbery -- the photo from the robbery at the Prudential Savings Bank refresh your recollection as to when it took place?

A Yes. The film has inscribed in the upper right-hand corner the date, July 29th?

MR. MAZUR: The government offers Exhibit 18 for identification in evidence.

MR. DOYLE: Objected to on the grounds your Honor has previously ruled on.

THE COURT: Overruled.

MR. CIAMPA: No objection.

xx (Government's Exhibit 18 received in evidence.)

MR. MAZUR: May I pass this to the jurors, your Honor?

THE COURT: Yes.

Q After he said that he robbed that bank to get money for his mother, did he say anything else about that

Prudential Bank?

A He did.

Q What did he say?

A He told me he robbed that bank another time in addition to the time he was photographed, and that he had robbed that bank with Frank Lewis.

Q Do you recall whether that second robbery was prior or subsequent to the July 29th robbery?

A I believe it was in August, '76.

Q Now, did Mr. Cranshaw say anything about future bank robberies that he had planned to pull with Frank Lewis?

A He did.

Q What did he say?

A He told Agent Carney and I that on October 5th, which was two days before the time we were talking to him, that he had met with Mr. Lewis and that Mr. Lewis had told him that they would meet again on the 7th of October. I believe it was a bar in Harlem where they were going to plan a robbery for the following week.

Q October 7th, that was the date he was arrested, is that right?

A Yes. He was supposed to meet him that day.

MR. CIAMPA: Objection to the question. The date who was arrested?

MR. MAZUR: The date Mr. Cranshaw was arrested.

THE WITNESS: That's correct.

THE COURT: Would this be a convenient place to interrupt for lunch?

MR. MAZUR: I believe it would, your Honor.

THE COURT: All right, we will take our luncheon recess, 2:15. Have a good lunch. Don't talk about the case. Don't let anybody talk about it with you.

(Luncheon recess)

AFTERNOON SESSION

2:15 P.M.

(In open court, jury present.)

THE COURT: Good afternoon.

Proceed.

MR. MAZUR: The government calls Sam Wichner back to the stand.

S A M U E L W I C H N E R, resumed.

DIRECT EXAMINATION CONTINUEL

BY MR. MAZUR:

Q Mr. Wichner, before lunch you were testifying about certain statements that Mr. Cranshaw made to you after his arrest. You testified about the statements he made concerning the Manufacturers Hanover robbery at 2084 Linden Boulevard on September 8th. Do you recall anything else he said concerning that robbery?

A Yes.

Q And tell the jury what you recall?

A Mr. Cranshaw told me that when they got in the car and drove away after they had gone into the bank, one of the individuals in the car through a rifle out the window of the car.

Q Do you recall anything else about that robbery

or that Cranshaw said about anything else?

A He did tell me that Frank Lewis had a white Cadillac.

MR. MAZUR: No further questions.

CROSS-EXAMINATION

BY MR. DOYLE:

Q Mr. Wichner, you testified on direct examination that after you picked up Mr. Cranshaw from Brooklyn and and were riding back in the car with him to Manhattan, that you discussed with him the subject matter of cooperation with the government, is that correct?

A Correct.

Q Now, did you tell Mr. Cranshaw what might happen to him if he failed to cooperate with the government?

A No.

Q Now, you were attempting, were you not, to persuade Mr. Cranshaw to cooperate with you, right?

A Correct.

Q And what did you call him during your conversations with him? Did you call him Kim?

A Yes.

Q And didn't in fact you say to him, Kim, if you don't cooperate you are going to be facing a good deal of jail time, something to that effect? Didn't you say

that to him?

A No.

Q So your testimony is that you pointed out only the benefits of cooperation and nothing else about co-operation, correct?

A I would answer no to that question.

Q All right. Did you, aside from benefits of cooperation, what you have testified about being your promise that you would convey information to the U.S. Attorney in his presence, did you indicate to him that there would be any other benefits of cooperation?

A No.

Q Now, at some point in your conversation with him did you tell him that one of the other persons who had been arrested in connection with one or more of these bank robberies was in jail in Brooklyn?

A Yes.

Q And did you also tell him in substance, Kim, the jail that we have here in Manhattan is the palace of jails, the Metropolitan Correctional Center; did you tell him that in words or substance?

A Yes.

Q And that was to induce him to cooperate with you and to make an incriminating statement with respect to the

bank robbery that occurred in Manhattan, is that correct?

A No.

Q However, thatwas one of the bank robberies in which you were endeavoring to get him to cooperate, right?

A Repeat the question, please.

Q There were bank robberies that you suspected him of having committed in Manhattan, that being one bank robbery, and two bank robberies in Brooklyn, right?

A No, incorrect.

Q How many bank robberies in Brooklyn?

A Three.

Q Three. Now, which of the bank robberies did you discuss with him first?

A The Manhattan Bank robbery.

Q And was that in the car on the way to the FBI headquarters that you discussed that with him?

A Yes.

Q What did he say at that time about it?

A He did not make any specific statements about that robbery. I made statements to the effect that we are interested in this robbery, it took place at 86th Street and York Avenue on August 30th. We know that there were three individuals in the bank. We believe you were one of the individuals in the bank and we want your cooperation

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your part in that robbery.

longer than you believed he was one of the individuals; didn't you say to him, Kim, this is you, and show him a photograph? Isn't that the way you put it to him?

A No.

Q Did you in the course of your conversations with him, and going back to the very beginning, did the subject matter of Frank Lewis come up?

A Yes.

Q And did Mr. Cranshaw in fact not tell you that he did not wish to cooperate with you because he was afraid of Frank Lewis?

A I believe that he -- well, he never stated that he did not want to cooperate. His statement was that he was extremely fearful for his life as a result of the fact that he was in fact giving us these statements that I have previously testified to regarding Frank Lewis.

Q But he did bring Frank Lewis up initially in the car ride, didn't he?

A Yes.

Q And that that time he told you he was afraid of Frank Lewis?

A Yes.

Q And for that reason he was not willing to co-operate, correct?

A No.

Q Now, you were not able to give him any assurances whatsoever with regard to his fears concerning Frank Lewis, were you?

A I do not recall.

Q In other words, you don't recall what you said about his fears concerning Frank Lewis, is that your testimony?

A Well, I believe at the time he was told that Frank Lewis was not in custody and that Frank Lewis was not at MCC where he was going to be lodged, but I don't recall any other statements.

Q Who made that statement to him? Did you or Mr. Carney?

A I believe I did most of the talking that day.

Q And that's all that you can recall, either you or Agent Carney saying to him concerning his fears about Frank Lewis, is that correct?

A Well, I'm testifying today on what I said and there were times during, you know, Mr. Cranshaw's -- him being in our custody that I wasn't with him. So I can't testify to what somebody else may have said to him. I'm telling you what I said, and I answered that question yes.

Q To your knowledge was Mr. Cranshaw interviewed by Agent Carney when you were not present?

A I don't know.

Q Do you have any knowledge one way or the other with respect to whether Agent Carney or anybody else at any time on October 7, 1976, gave any assurances to Mr. Cranshaw concerning Frank Lewis?

A I have no knowledge of that. I do, however, know that Mr. Agent Carney told me that Mr. Cranshaw made a statement to him which was not made in my presence.

Q And do you know the substance or the contents of that statement?

A Yes, I do.

Q And was anyone else present when Agent Carney obtained that statement?

A I do not believe so.

Q Did he tell you when he took that statement?

A When you say when he took that statement, are you referring to when Mr. Cranshaw told Mr. Carney that?

Q Right.

A I believe it was -- there is a little room in the U.S. Attorney's annex when Mr. Carney and Mr. Cranshaw were alone and I was going from assistant to assistant.

Q That was the next day on October 8th?

A To the best of my recollection, yes.

Q So we have this first phase of your conversation with Mr. Cranshaw in the car, at which time he tells you that he is fearful of Frank Lewis and he makes no other statements in the car ride concerning the events of any of these bank robberies, is that right?

A That's correct.

Q Now, you get to FBI headquarters and what you do at FBI headquarters, as I understand your testimony, you show some photographs to Mr. Cranshaw, correct?

A Well, that's not the order in which things happened but we did show him the photos at FBI headquarters.

Q Now, you have previously advised Mr. Cranshaw of his rights orally, you testified, is that correct, before you got to FBI headquarters?

A Correct.

Q When you got to FBI headquarters you did not repeat any advice of his rights nor did you show him and have him sign that form that you have referred to until you had first interviewed him concerning the facts, isn't that true?

A That is incorrect.

MR. DOYLE: This is an exhibit that bears the exhibit number GX H-1 and I would like to ask the

original be marked for identification. Perhaps I can mark it myself.

I have marked it Defendant Cranshaw Exhibit A for identification, your Honor.

Q Mr. Wichner, showing you the exhibit marked Defendant Cranshaw A for identification. Let me ask you if you can identify it?

A I can.

Q And what is that, sir?

A This is an arrest log of approximate times concerning the arrest of Mr. Cranshaw on October 7th.

Q Now, did you make the entries on that log at or about the time of the events that they reflect?

A These are approximate time entries.

Q In other words, were you making those entries while the events were going on?

A I do not recall exactly when each entry was made. You know, you keep these things -- I don't recall exactly. In other words, 15 minutes might go by and I could be in photographing and be writing down. I would say no. They are approximate times.

Q In substance is it your recollection that you did not at the end of all the events reconstruct what had happened by going back and putting down a list of events and

putting times next to them; that's not what happened.

A That's correct.

Q Roughly you prepared this as things were happening?

A Yes. Although several entries may have been put down at one time.

Q And were you looking at your watch in connection with those entries?

A I don't recall.

Q When you entered the time, was it your practice to use your watch and to look at your watch at the same time that you were making the entry?

A No.

Q And how did you ascertain the time that you put down on this log?

A Well, for example, I knew that we left -- I would have noted the time that we left the office, but I may not have noted the exact time that he was photographed or fingerprinted. I may have backtracked and knew that we spent a half hour and I may have spent the first seven or eight minutes in photographing and the following ten minutes, just to give me a rough idea of how much time he spent doing each thing.

Q In noting the time you would note it from your watch or a clock on the wall, one or the other?

A Correct.

Q Now, showing you Government's Exhibit 14 in evidence, let me direct your attention to the upper right-hand corner of that document and ask you whether you made the entries at that location?

A That's my handwriting.

Q Then let me direct your attention to the lower left-hand corner of the document and ask you whether your handwriting appears there.

A It does.

Q And it appears where you entered your signature, correct? And then below it is the signature of Agent Carney?

A Correct.

Q Below that is a time?

A Correct.

Q All right. Now, did you make the entries on this document at the time that the document was given to Mr. Cranshaw?

A No -- yes, at the time it was given to Cranshaw.

Q And did you note the time in connection with making those entries?

A Well, yes.

Q You did note the time?

A Yes.

Q Now, I direct your attention to the time in the upper right-hand corner and ask you if that time is correct?

A No.

Q What is your explanation for the fact that it is not correct?

A It was an inadvertent error on my part.

Q Do you see anything else on this form that is incorrect?

A Yes.

Q What else is incorrect?

A I believe that the time of execution or actually the time of me witnessing it below the two signatures is also incorrect.

Q Where it says 6:22 P.M.?

A Correct.

Q Do you see anything else on this form that's incorrect?

A No.

Q Now, I direct your attention to the date in the upper right-hand corner. Would you read that date to the jury?

A 10-7-76.

Q And I direct your attention to the dates in

the lower left-hand portion of the document and I ask you to read them to the jury.

A 10-8-76.

Q Does that refresh your recollection that there is something else wrong with this document?

A Yes.

Q What is that?

A Well, there is an inconsistency between the date in the upper right-hand corner and the date after my name and Agent Carney's name.

Q What is your explanation for that inconsistency?

A I would have to say it is an inadvertent error on our part. There is a possibility that we did not witness it on the date it was taken but rather kept it and forgot to sign it, but I don't recall.

Q Isn't it a fact that the document was not in fact signed by Mr. Cranshaw until he had already made certain statements to you concerning these bank robberies on October 7th?

A Absolutely not.

Q Now, your testimony is that after you arrived at FBI headquarters, and let me ask you what the first thing that happened was after your arrival at FBI headquarters?

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A As he arrived we parked the car in the garage adjacent to the building. We then had Mr. Cranshaw logged in at the lobby desk, took an elevator up to the 7th floor. We went into the interview room.

You want me to continue?

Q Go ahead, yes.

A We unhandcuffed Mr. Cranshaw and he was handcuffed with one arm free. The food was distributed and then the FD395, the interrogation advice of rights form was presented to him.

Q Did Mr. Cranshaw sign that form at that time?

A He did.

Q Did you sign it at that time?

A I do not recall.

Q Did Agent Carney sign it at that time?

A I do not recall.

Q Is it the procedure of the FBI to witness the forms that are signed by a suspect at the same time that he signs them?

A It is.

Q And do you have any recollection that you departed from that procedure on this occasion?

A No, I do not.

Q Now, was there any conversation with Mr. Cranshaw

concerning the facts of these bank robberies during the meal?

A During the what?

Q The meal when you were eating.

A Yes.

Q And was it during the meal that you showed him a photograph of the Chemical Bank?

A Yes.

Q Now, when was it that the subject of the Metropolitan Correctional Center came up in the course of your conversation with Mr. Cranshaw?

A I do not recall the specific time but it was brought up when we explained to Mr. Cranshaw the procedure by which he would undergo in terms of processing on that evening and the next day.

Q You don't recall whether that was before or after the meal, for instance, correct? You are not sure of the order?

A Well, the meal commenced immediately upon arriving in that interview room. The food was distributed, the advice of rights form was given and the interview commenced.

Q Now, was it during the meal that Mr. Cranshaw signed that photograph, saying that was a picture of him?

A Yes.

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Q And is it not a fact that it was in connection with that photograph that you told him in words or substance that if he admitted to having robbed this bank in Manhattan, then he would be kept at this palace of jails and he would not have to go to Brooklyn and be kept in a local jail, is that correct?

A Incorrect.

Q Did you make a tape recording of this conversation?

A No.

Q Do you have equipment at the FBI headquarters here in New York City to tape interviews with suspects?

A Yes.

Q And do you have videotape equipment so that you can actually film the enterviews with suspects?

A That I don't know.

Q But you didn't use that equipment in this case, did you?

A No.

Q Now, is it not a fact that Mr. Cranshaw repeated to you at FBI headquarters his refusal to cooperate because of his fear of Lewis?

A No.

Q Now, going back to the meal, you testified that you showed him the photograph during the meal, that

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he signed the photograph during the meal. Anything else happen at that phase of the events?

A Not at that particular phase, no.

Q Now, when was it that you showed him the photographs of the other bank robberies?

A Immediately after we finished up the discussion of the Chemical Bank robbery.

Q And what you did with respect to them was show him the photographs and point to various figures in the photographs, correct?

A Correct.

Q And you said to him, this is you, this is Lewis, this is the third guy; that is, you furnished the information to him in the course of this conversation, didn't you?

A No.

Q Government's Exhibit 15 in evidence is a photograph from the Chemical Bank robbery. Let me ask you whether that is a photograph that you showed to Mr. Cranshaw and then stated to him that this is a photograph of the person who vaulted over the counter? Did you say that to him?

A No.

Q You did tell him that someone had vaulted over the counter, however, didn't you?

A I do not recall.

Q Now, is it a procedure of the FBI to have a suspect sign and identify the back of surveillance photographs if they depict him?

A Yes.

Q Now, I show you Government's Exhibit 18 in evidence and Government's Exhibit 18 in evidence, the second photograph in that series, and ask you whether with respect to those exhibits you did not use that procedure in this case, correct?

A Incorrect.

Q Is it your testimony that Mr. Cranshaw signed and identified the back of those photographs?

A No.

Q So that you didn't follow the procedure in this case with respect to those photographs?

A I followed the procedure but the results were not the same as they were with this photo.

Q Well, what were the results?

A I requested Mr. Cranshaw to do the same with these two photos as he had done with these photos and he declined to do it.

Q He declined to do it because he did not want to cooperate in connection with Brooklyn cases, correct?

A That is incorrect.

Q However, he specifically refused to sign those photographs; that's your recollection?

A That's my recollection.

Q Now, Mr. Cranshaw not only refused to sign those photographs, he also refused to furnish any written statement to you, didn't he?

A That's correct.

Q The fact is, Mr. Wichner, isn't it, that Mr. Cranshaw had in fact refused to admit anything to you in the course of these conversations except to indicate on the back of Government's Exhibit 15 in evidence the words written on there, is that correct?

A That is incorrect.

MR. MAZUR: Objection.

Q When you asked Mr. Cranshaw to give you a written statement, he refused to do so because he had wanted you to make some promises to him that you were unwilling to make to him, correct?

A Incorrect. Let me rephrase that. I will answer that question as correct.

Q In fact, he was angry at you for having refused to make promises to him that he felt should be promised to him, right?

MR. MAZUR: Objection only to the form, your

Honor, as to whether he was angry or not.

THE COURT: Overruled.

Did he show any visible signs?

Q Did he show visible signs of anger in that he was asking for things -- as a condition for cooperating he was asking you for promises you were unwilling to give him?

A That's correct.

Q In fact, that was his position throughout this entire conversation, from the beginning to the end; he was asking for things, you wouldn't give them as those were a condition of his cooperation, correct?

A Incorrect.

Q And specifically he wanted protection from Lewis which you were unable to promise him, correct?

A Incorrect.

Q But you do agree he wanted protection from Lewis?

A I do agree.

Q You do agree you couldn't promise it to him?

A I agree.

Q At some point during your conversations you got some background information about Mr. Cranshaw from him, true?

A That's correct.

Q Was that before or after the conversations that you testified to about bank robberies?

A I don't recall.

Q Did he tell you that he was a musician?

A Yes.

Q Now, you made a notation on your report that Mr. Cranshaw is six feet one inch tall, is that correct?

A I believe so.

Q Was that based on your observation of him?

A It was based on observation and interrogation.

(Pause)

Q You testified today on direct examination that on September 30, 1976, you showed a group of photographs to Velma Graham and that she picked out one of those photographs as being a photograph of the person who vaulted over the tellers' counter at the Chemical Bank. Do you recall that testimony?

A Yes.

Q Now, is it not a fact that when you showed that group of photographs to Miss Graham on that day, that she picked out not one photograph but two; that is, Government's Exhibits 9A and 9B in evidence, that she picked out those two photographs as being persons that looked like the person who vaulted over the tellers' counter, isn't that

what happened?

A I do not recall that.

Q Now, are you testifying that you have a recollection that she picked out one or that you don't have any recollection of what she did?

A Well, I'm testifying that I spread six photographs on a table and she finally turned to me after a minute or so -- it may have been two minutes -- and gave me this photograph and said, "This is the individual that vaulted the tellers' counter,"or whatever the words are that the signed statement reads.

MR. MAZUR: What is the exhibit number?

THE WITNESS: Government Exhibit 19A.

Q Were you watching what she did with the other photographs while she was examining them?

A I do not recall.

Q To your knowledge has Lewis been indicted in connection with this bank robbery?

MR. MAZUR: Objection.

THE COURT: Sustained.

(Pause)

Q With regard to your interviews of Miss Graham concerning the bank robbery, do you have a recollection of when you first interviewed Miss Graham regarding the

Chemical Bank robbery?

A It would be a day or so after the bank robbery.

Q At that time did she give you a description of the height of the individual who vaulted over the teller's counter?

A No.

Q Did she at any time give you that description of his height?

A No.

Q Did she give Agent Higgins a description of this individual's height on the day of the bank robbery?

A She gave one of the individuals who responded to the bank that day. If that's the 302 from Higgins that day, and if I could take a look at it I could answer the question yes.

Q Does that refresh your recollection as to what height she said that individual was?

MR. MAZUR: I don't know how he could have a recollection of what she said to Higgins.

MR. DOYLE: The question is what he found out from Higgins.

MR. MAZUR: Objection as hearsay.

THE COURT: Sustained.

MR. DOYLE: Nothing further, your Honor.

* * *

MR. MAZUR: Objection.

THE COURT: I will have the question.

(Question read)

THE COURT: Overruled.

MR. MAZUR: It is only to form. When he said "those photographs"is he referring to the September 8th arrest photographs? I want to know what photographs he wants.

THE COURT: Can you reframe it so that you identify what photographs you are talking about.

MR. CIAMPA: I will rephrase it.

Q You had access to Walton Claxton's photographs as a result of his being arrested in Brooklyn on September 8th in connection with a robbery that occurred that day in which his car was sighted, is that correct?

A Correct.

Q Hence Walton Claxton's photograph appeared before Velma Graham's eyes in connection with the 86th Street bank robbery, is that correct, as a suspect?

A Correct.

MR. CIAMPA: No further questions.

REDIRECT EXAMINATION

BY MR. MAZUR:

Q Mr. Wichner, on September 10th, you showed the

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photo spread that contained Walton Claxton's picture to Velma Graham. Was that photo of Walton Claxton in that spread, Exhibit 7A, an arrest photo from the September 8th arrest for the Brooklyn bank robbery?

A No.

Q Now, you testified about certain photo spreads that were shown to other individuals in the bank. Do you have knowledge that those individuals were shown photo spreads -- all shown photo spreads that contained a photo of Walton Claxton?

A I'd have to see the documents to know which individuals were shown which photos.

Q Do you have any knowledge about where in the bank during the robbery the persons that were shown those photographs were during the robbery?

A The individuals were shown a series of photographs of particular suspects depending on where they were in the bank robbery and where the suspect was believed to have been. Meaning that if an individual was in one particular area of the bank and there were two employees in a position to see that individual, then they would be shown a series of photos containing that particular suspect. But that if another suspect was at the other end of the bank and these witnesses could not see him or have a good view of him

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they might not be shown that particular series of photographs.

Q Do you have any knowledge as to whether any of the persons who were shown photo spreads which contain the defendant Claxton said as part of their response to those photo spreads they didn't get a good look at Walton Claxton?

MR. CIAMPA: Objection to the leading.

THE COURT: Don't lead. It is your witness.

Q Do you have any knowledge of what any of the witnesses to the Walton Claxton photo spread said or did about that photo spread?

A I'd have to see the appropriate 302s.

Q As you sit here today do you recall what any of them said or what it was reported to you that any of them said?

A Well, I do recall that throughout the investigation in terms of showing --

MR. CIAMPA: I am going to have to object to any of them. I think that is entirely and imprecise as to form.

THE COURT: Overruled.

Q Continue.

A I recall that throughout the investigation in terms of showing photo spreads to bank witnesses, bank witnesses were blocked out due to the fact that the bank

was a large bank and due to the fact that there were three individuals in the bank participating in the robbery and that these individuals were moving around in the bank. I recall there were certain witnesses who said that I didn't see this guy because he was over here and this fellow was by the desk and I didn't see the fellow that leaped over the counter because I was sitting in the back.

But to specifically recall what each witness said about each spread I can't do it.

Q Mr. Wichner, let's talk about the license plate for a minute. You testified it was reported to you that somebody reported to the FBI or to a police officer that the license plate of the getaway car was B13BUY; is that correct?

A Yes.

Q Was it also reported to you the state of registration of that license plate?

A It was believed to be a New York.

Q Do you know if the person-- was it reported to you whether or not the person who saw that plate was sure it was a New York plate or believed it to be a New York plate? How was it reported to you?

MR. CIAMPA: Objection to the leading.

THE COURT: I am afraid so. Sustained.

Q Do you recall what was reported to you concerning that license plate?

A Yes.

Q What was it?

A I recall that Special Agent Allen Garber approached me in the office the afternoon of the robbery and told me about the getaway license plate and he gave me a piece of paper which he said was obtained through a woman by the name of Mrs.Edsall who was standing by an area where the getaway car was parked, and we discussed the fact that if -- and she had told -- well, the information he had given me was that she had told the interviewing agents that it was a New York plate. And Agent Garber and I were discussing the fact that the New York plates are three numbers and three letters and we had B13BUY which was very strange for a New York plate and we had some hesitation as to whether it could be a New York plate, maybe a Pennsylvania plate because they have letters. So we did various variations of plate with different letters, numbers.

Q Did you check whether in fact there was a New York plate B13BUY registered to anybody?

A We did and it was not. A non-existent plate.

Q Now, when Mr. Doyle was questioning you about Mr. Cranshaw's statements you said that in the car on the

way to the FBI headquarters you discussed with Mr. Cranshaw the benefits of cooperation to him or the possible benefits of cooperation to him?

A Correct.

Q Did you say anything to him about what you could guarantee would happen?

A The only thing that I promised him is that I would, in front of the United States Attorney, in front of Mr. Cranshaw, while he was present, tell the Assistant United States Attorney exactly to what degree he cooperated.

Q Did you tell him anything that would happen with respect to his sentence if he cooperated?

A I did not, except that sentencing was not under the domain of either the United States Attorney's office or the FBI.

Q Now, you also testified in response to Mr. Doyle's questions that Mr. Cranshaw made no other statements in the car except that he was fearful of Frank Lewis. I show you Exhibit 13A in evidence and ask you if that refreshes your recollection as to anything else that he said in the car ride.

A Yes. We discussed this particular picture, 13A, and who the individuals were.

Q And was that before or after he was advised, orally

advised of his constitutional rights?

A After.

Q Now, you testified on cross-examination that it was absolutely incorrect that Exhibit 14, the warning and waiver, was signed after Cranshaw had made all the statements about the robbery. You said that was absolutely not so.

A That's correct.

Q In fact you said, or I think the converse of that is that he made no statements until after that was signed?

MR. DOYLE: Objection, your Honor.

MR. MAZUR: I will withdraw that.

Q You were asked on cross-examination whether you had equipment to tape interviews with individuals and you testified that you didn't use any recording equipment to tape record your conversations with Mr. Cranshaw. Is it your normal practice to use tape recording equipment to record conversations with individuals?

A It is a highly unusual practice.

Q You testified on cross-examination that at various points Mr. Cranshaw asked for certain guarantees from the FBI and that you said you couldn't give him any.

A Correct.

Q At any point up until the end of the time that he made the statements that you testified about, did he say he wanted a lawyer?

A He did not.

Q At any time did he say that he didn't want to make any further statements?

a In Mr. Akerman's office the following day he did make the statement that he did want a lawyer and he did not want to make statements, and at that point the interview was terminated. That was the first time we talked to him about any of the details involved in the robbery.

Q But that was long after the statements that you testified about before this jury?

MR. DOYLE: Objection to the leading, your Honor.

THE COURT: Mr. Mazur, don't lead.

MR. MAZUR: Withdraw it, your Honor, and apologize.

Q Mr. Wichner, when did the statements that Mr. Cranshaw make and which you testified about before this jury take place?

A Statements regarding the four bank robberies that Mr. Cranshaw supplied to me and Agent Carney were made in our office that evening between 7:30 and 11 o'clock at night, and in Mr. Mazur's office -- the last statement that Mr. Cranshaw made in Mr. Akerman's office somewhere

around the noon hour was--

MR. DOYLE: I think we are going into a whole new area on redirect. I don't think it is within the proper scope of redirect.

THE COURT: It is just getting off the track, Mr.Mazur. See if you can confine it to the pertinent facts that you want to bring out.

MR. MAZUR: If I might have just a moment.

(Pause)

MR. MAZUR: No further questions.

MR. DOYLE: Nothing further, your Honor.

MR. CIAMPA: No further questions.

MR. MAZUR: Government rests, your Honor.

THE COURT: The jury may take a short recess.

(Jury leaves)

MR. CIAMPA: I have a witness under distress. He has been in court three days and I understand his house has burned down and his family is out in the street and he is about to lose his job. If the Rule 29 motions are going to consume the rest of the day --

THE COURT: They aren't going to. If they do it will be the first time in my career. Put him on out of order.

MR. DOYLE: I have a motion, first of all, to strike

* * *

(In chambers)

MR. MAZUR: Your Honor, I have several preliminary matters in the way of evidentiary rulings which I think will speed the trial along.

The first, I served and filed on last Wednesday a memorandum of law with respect to the government's position that it is entitled to prove a robbery, a bank robbery which took place nine days subsequent to the robbery which is with respect to this indictment and which is the government's position it involved the same defendants and same mode of operation under Rule 404(b).

THE COURT: Both defendants?

MR. MAZUR: Both defendants, your Honor.

Your Honor indicated when I raised this at the last pre-trial conference that you would prefer to wait until the government had put in its proof as to the robbery, which is the subject of the indictment, before making your ruling. The reason that I request your Honor to reconsider that position is that I think it would be somewhat confusing to a jury to have evidence-- if your Honor did rule ultimately on it could come in -- to have the evidence come in without having had the opportunity for the government to mention it in its opening statement. I would not feel confident mentioning it, obviously if you hadn't ruled on it ahead of time.

THE COURT: I will abide by my original ruling. Don't put it in without coming up to tell me that you are going to do it. When you put it in is your business but don't put it in without coming up to tell me that you are going to do it. At that point I will rule. That's what I told you.

MR. MAZUR: I know it is what you told me.

THE COURT: I didn't tell you to wait until you got your whole case in. I told you to come up and tell me before you put the evidence in.

MR. MAZUR: I know you said it. I will state it now. I take it from what you are saying that I should not mention it in the opening statement.

THE COURT: Exactly.

MR. MAZUR: The second ruling that we request with respect to the third defendant who is not going to be on trial here today. The defendants have asked and the government has stipulated to certain testimony and documents that the supposed alibi witnesses for that third defendant would testify to if called at this trial. It is the government's position, however, your Honor, that no such issue as to the absence of the third defendant from this trial or the fact that the government's witness who will identify these two defendants in court had previously identifie

* * *

THE COURT: I see.

MR. MAZUR: In addition, his client could have told him that what he said.

THE COURT: The agent testified. His client could have but he didn't apparently.

Could I have what he said today?

Lyons is the one you are talking about?

(Record read)

THE COURT: Do you have any evidence we could go into at this time? Obviously this should be researched.

MR. MAZUR: Yes, there is other evidence we could go to.

MR. CIAMPA: The whole business of a prior similar act, while the jury is out, and I don't mean to characterize it as a whole business, I would like a paragraph on the record as to the government's position of the subsequent similar act.

THE COURT: Why?

MR. MAZUR: There is a 10-page memorandum of law.

MR. CIAMPA: I would like to bring something to the court's attention.

THE COURT: Well, bring it to my attention. What is it you want to bring to my attention? You have all my

attention, Mr. Ciampa.

MR. CIAMPA: Thank you, your Honor. I would like to point out that the [illegible] cases that the government cites in its memorandum are cases where the similar act is admitted in this circuit to prove intent, in the case of Johnson; to prove that the defendants possessed a large quantity of guns so that the inference could be drawn that they used those guns in the crime. That's in Ravich. In Miller to show that a larger conspiracy, of which the particular trial was one facet.

I want to point out that in my client's case before the court today, none of that applies. That if the similar act is allowed in this case it is for identification, the government would concede. And identification works just the opposite. Because the government knows and the government has evidence that the man in the white hat in the Brooklyn case is Frank Tilman Lewis.

So for purposes of identification they are offering a similar act which does not eluciate the identification but confuses totally the identification. Part of this similar act offering will be photographs of a man in a white hat in a Brooklyn robberty that the government knows is not my client.

So this is the most specious kind of reasoning

and the memo doesn't apply at all.

MR. MAZUR: The government's position on the similar act as respects Mr. Claxton, two things: First of all it goes to his identity. It goes to his identity because nine days or ten days after the robbery which is the subject of this indictment, he is caught driving the getaway car. He was in the bank but he participated in another robbery with Cranshaw after this robbery.

In addition it goes to a common plan and scheme because the robberies were carried out with the same mode of operation, as proof will show. The fact that somebody else in a subsequent robbery wore a white hat, proves nothing except there is more than one white hat in America. It can be argued to the jury, and we concede, the man in the white hat in the second robbery is not his client. It is obviously not his client from the surveillance photos.

MR. CIAMPA: May I respond briefly?

THE COURT: Go ahead.

MR. CIAMPA: The rule for other crimes, wrongs or acts prohibits other crimes, wrong and acts, and there is a special exclusionary provision for the admission of certain acts. That is, where the identity will be facilitated by the act. In this case the identity will be beclouded by the act. So I think we go to the main provision

of the rule which has traditionally under common law, before the law was codified, excludes such another act. This is clearly not the exception that is contained in the rule. This operates contrary to the exception and can only serve to confuse.

THE COURT: Well, what do you mean, the rules serve to confuse? If that's what you mean, I agree. They serve no other purpose. But in any event I don't think the rules excludes this evidence. I have ruled on it and that's it.

MR. CIAMPA: You had not ruled prior to this time.

THE COURT: I just said I would permit it at the side bar.

MR. CIAMPA: Please let me make my point, your Honor. I am not talking about the statements of Cranshaw. I am talking about a raft of evidence as to a Brooklyn bank robbery which the court --

THE COURT: It was raised before trial. I didn't need further argument about it. I read the memoranda, I considered the point and at side bar I said I would permit it, the government could show these other robberies. What more must I do to make a ruling, Mr. Ciampa? Write an opinion of 58 pages?

MR. MAZUR: Your Honor, there is other proof we

* * *

involved in certain bank robberies?

A That's correct.

MR. MAZUR: No further questions.

The government rests on this hearing also.

MR. DOYLE: Nothing further, your Honor.

THE COURT: All right, you are excused.

(Witness excused)

THE COURT: We will take a short recess.

(Recess)

(In open court)

THE COURT: The court will make suitable findings in the record after I have had an opportunity to do so. But at this point the conclusion seems inescapable and I must deny your motion. He was given his Miranda warnings and that at no time did they dishonor any explicit or implicit requests of his to cut off the questioning.

I'll elaborate on that to some extent, but that is the essence of it.

We will adjourn now until tomorrow morning --

MR. DOYLE: May I briefly address myself to Agent Wichner's testimony? I believe the government plans to elicit from Agent Wichner not only admissions about the subsequent bank robbery at Manufacturers but as to two other bank robberies, both at the Prudential Savings Bank. Now, I

don't think that they stand on the same footing as the Manufacturers robbery for the simple reason that they don't involve the same modus operandi. There was one robbery where the testimony is that Mr. Cranshaw said he robbed the bank because his mother needed the money and he acted alone, and I believe the second robbery where he said that Lewis was involved in in some unspecified way. But in neither one of them was there any of the earmarks of similarity that would provide a basis for probative value on the issue of identity, which I understand is the key issue -- I don't know precisely what your Honor focused on in admitting the similar acts but I think that is the only basis.

THE COURT: A common practice is also pertinent.

MR. DOYLE: I don't think that there is enough evidence with regard to those two bank robberies of a common plan, your Honor. There is enough of a remoteness and dissimilarity so they don't fall --

THE COURT: Why do you say they are remote?

MR. DOYLE: One he acted alone.

THE COURT: What was the date of that one?

MR. MAZUR: That was either July 29th or some time in mid-August, within a month of the robbery--

THE COURT: Before?

MR. MAZUR: Prior.

THE COURT: Prior similar acts.

MR. MAZUR: Also, your Honor, I believe that it should be admissible for two reasons, as was set forth in our memorandum of law. The first is it is a common plan with Lewis.

THE COURT: But he was alone there.

MR. MAZUR: No.One of the two robberies at this Prudential Bank he was alone. One according to his own statement he was with Lewis. Again the other robberies, the one in the indictment and the subsequent robbery involved Lewis. On the day of his arrest he told the FBI he was supposed to meet Lewis in a Harlem bar to plan still another robbery with Lewis.

THE COURT: At the moment, Mr. Doyle, we are focusing on the one where he acted alone. How is that a prior similar act? How does it go to identity, how does it go to motive, how does it go to intent, how does it go to common plan, opportunity, or whatever?

MR. MAZUR: It goes to motive to the extent that subsequent to his telling the FBI that he robbed that bank on July 29th he told them the reason that he robbed it was that his mother needed money and that he went to his mother and gave her the money. That's what the proof

would show. We also have, your Honor, evidence in the trial, including the technical color photographs that Mr. Wichner talks about, that the defendant had a rather high life style and needed money. So one of the reasons and one of the motives for the bank robbery which is at issue in this trial was the defendant's need for money, whether for his mother or to afford the fancy silk suits, and so on, that he is depicted in in those pictures. So that single robbery goes to motive. It also goes to identity, your Honor, and to opportunity to the extent that the man is experienced in robbing banks. It goes in for that.

In addition the very same bank that he says that he robbed by himself at the end of July, he then says he robbed again a few weeks later with Frank Lewis. So the two robberies tie in. The man robbed, he says, to the FBI the same bank within a period of weeks. He knew that bank and that bank goes to help establish that he robbed that bank the second time with Frank Lewis and that goes to establish that he robbed the bank that's charged in the indictment.

MR. DOYLE: It is tenuous. It is a classic example of where the prejudicial effect greatly outweighs the probative value. These are the most esoteric type of

consents that I can think of.He robbed one bank because his mother needed money, and so on. They can introduce the photographs to that effect if they think it is relevant, which I don't think they are, but it is bootstrapping to say that makes a bank robbery relevant. It is a classic example of an argument that boils down to the fact if somebody robs one bank, then he is the type of character or he has the type of propensity that he would rob another bank. That is a ground on which it is not admissible.

In the balancing testimony which your Honor must employ here, there is no need for these similar acts because the government already has a similar act as to which it has photographic evidence and other evidence. So these are similarly highly prejudicial dissimilar crimes that do not have any probative value on anything other than propensity and are not admissible.

MR. MAZUR: Your Honor, as to the confusion or anything that would result from the introduction of these things, their introduction in evidence--

THE COURT: Address yourself to the question of whether the prejudice outbalances the probative value. That's the testimony.

MR. MAZUR: The probative value, that is in part of the testimony. I think Mr. Doyle has somewhat misstated the

circumstances under which similar acts are admissible. They are not admissible when they happen to show criminal character or bad character. They are inadmissible only when they are offered solely to prove bad character. In this case, for the reasons I have already stated, they go to motive, they go to identity, they go to common plan, they go to opportunity to the extent that he knew these banks and knew Frank Lewis.

Now, as to the manner in which this proof would come in, this proof would take approximately five minutes to come in. It consists entirely of surveillance photos which the defendant identified to the FBI. As to the reason we need them, your Honor, in addition to the other similar act, the reason is that the surveillance photo on the Prudential Bank robbery which the defendant says he did by himself is a much better and clearer likeness of this defendant than the surveillance photos which are in evidence already as to the other similar acts. That's why it is probative. That is also why -- and for the other reasons I have stated it is admissible. It would take a very short time to prove. When he says it is prejudicial, I believe what it means is it hurts his client because the picture is so good.

THE COURT: What he means is if you prove he

committed another bank robbery, then that would tend to say that he did it once, he would do it twice.

MR. MAZUR: In addition to having that tendency, which the government can't deny, because all similar acts have that tendency. Also in addition to having that tendency, it is not offered solely for that purpose. It is offered in addition to establish the motive, the intent and the identity, as I have already detailed in the memorandum of law.

THE COURT: I am going to admit it. I think they are sufficiently related in both sequence, in the time, in the interrelated nature of the operations, on the questions of intent, motive, identity, common plan, opportunity. I think it meets the classic situation where it is admissible; that its probative value does outweigh its prejudicial effect. Surely that is so -- one other robbery is going in anyway. It seems to me that adding two more isn't going to greatly tip the scale as prejudicial. The issue of identity here is so close that I think in the interest of justice it requires the admission of this evidence.

10 A.M. tomorrow, gentlemen.

(Adjourned to December 1, 1976, at 10 A.M.)

* * *

pre-trial motion, which it was not. In any event, based on the testimony which the court has heard, I find that there is no unequivocal evidence of any involuntariness on the part of the witness. I would think at most there may be a jury question.

MR. DOYLE: Your Honor, with respect to the similar act proof, we have an objection based on our basic position and the record should reflect that we, of course, are opposed to the receipt of any of the similar acts, Manufacturers Bank robbery as well as the other bank robberies.

Secondly, with respect to the defendant Cranshaw there is basically no corroboration other than his own statements to the agent with respect to those bank robberies. The only evidence against him with respect to those robberies was his statements to the agents. There is nothing else connecting him with the bank robberies except the photographs. The only way they came in was through his own statements. So there is no independent evidence linking him up with the similar acts. So our motion is that they should be stricken and the case is therefore tainted by reason of the receipt of that evidence.

THE COURT: Let me hear you very briefly on the last point.

last point.

MR. MAZUR: First of all, Mr. Cranshaw's statements are corroborated by those photos. Special Agent Wichner testified without objection that those were photos taken from the various bank robberies that Mr. Cranshaw made his statements about.

Maybe for the court's ruling on that portion of the motion you ought to have the photos before you.

THE COURT: I don't need the photos.

MR. MAZUR: If any corroboration is needed.

THE COURT: It is a confession. Don't you need independent corroboration?

MR. MAZUR: That may be to convict on the robbery that we are talking about --

THE COURT: But on a similar act don't you need it?

MR. MAZUR: I don't know the answer as to that. If you did need corroboration I submit we have it.

THE COURT: You do have it. What is the corroboration

MR. MAZUR: The corroboration for the Prudential robbery is Exhibit 18 in evidence.

THE COURT: Yes. That's enough.

MR. MAZUR: There are other similar acts.

THE COURT: I'm sure there are. I have enough.

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I deny the motion.

MR. DOYLE: Further just a general insufficiency point, that the witness Graham is unable to make a positive identification. Her only testimony is that these defendants look like the persons who were in the bank.

THE COURT: Again, that's enough for the jury.

MR. DOYLE: Together with the fact that the photographic evidence is simply inconclusive and insufficient to convict.

THE COURT: Likewise for the jury.

I deny your motions.

MR. CIAMPA: Move to strike the in-court identifications, the evidence as to in-court identifications on grounds previously stated.

THE COURT: Denied.

MR. CIAMPA: I move to strike the subsequent similar act on the grounds previously stated.

THE COURT: Denied.

MR. CIAMPA: I move to dismiss -- judgment of acquittal under Rule 29 on the grounds of insufficiency, there being the only testimony of Velma Graham and a hazy photograph which I submit are both insufficient as a matter of law.

THE COURT: Denied.

* * *

(Jury leaves)

THE COURT: If you will come into the robing rom I will rule on your requests.

(In the robing room)

THE COURT: My rulings are all in the margin.

MR. CIAMPA: May I be heard on one request?

THE COURT: In due course. Let's make a record in some orderly way. In essence I am going to give his charges in substance but not in that form.

I would say the same as to your requests, Mr. Doyle. Eyewitness identification, and so forth. I will give the substance of the pre-trial identification.

MR. DOYLE: It will need a little adapting because I mentioned lineups in there.

THE COURT: I will try to get some adapting in there if I get a chance.

MR. DOYLE: I can bracket those items, your Honor.

THE COURT: I have to go over it tonight.

Do you have any other requests? Did you get together on the one that I asked you to?

MR. DOYLE: Your Honor, my poisiton on that is that the government's request is agreeable and I think --

THE COURT: Which?

MR. DOYLE: Their request number 12, except for the last sentence which deals with motive, which I don't comprehend.

THE COURT: What is your comment about it?

MR. DOYLE: The last sentence talks about motive and it just escapes me how committing one bank robbery gives you a motive to commit another one. I don't understand how there is any connection.

MR. MAZUR: That's not the logical inference that we seek to draw. It was the statement by Cranshaw that he robbed the bank because his mother needed money and then turned the money over to her, which in our view tends to make that robbery, the Prudential robbery, the July 29th, September robbery applicable on motive.

THE COURT: I think so.

I might say the charge does say the defendant in question. We might modify that to say Cranshaw --

THE COURT: You charge aiding and abetting in each one of these counts, don't you?

MR. MAZUR: Aiding and abetting.

THE COURT: The indictment charges aiding and abetting in each count.

MR. MAZUR: Correct.

THE COURT: There is also proof here of a common

plan or scheme.

MR. MAZUR: In the sense of common plan or scheme the prior acts should be considered against both.

THE COURT: Certainly.

MR. MAZUR: In the sense of identity they should be considered against both. But in the sense of motive really the only one is Cranshaw.

THE COURT: Correct it as you think it should be. If everybody is happy with it I will give it verbatim.

MR. CIAMPA: Your Honor, I am not happy with it. Are you ready to hear me now?

THE COURT: No, I am ready to accept a concrete suggestion for a charge. Have you got a written charge?

MR. CIAMPA: No, your Honor. Then I have nothing on which to rule.

MR. CIAMPA: I am objecting to the characterization of participation in the Brooklyn robbery. There is not a scintilla of evidence in the case that indicates Clayton participated in the robbery. The two government witnesses, they are asking you to characterize what those two government witnesses stated as exculpatory. In my opinion it is participation in the robbery, namely, that he was held at gun point and forced to drive the getaway car.

I would ask that you limit that request to

Cranshaw only.

THE COURT: What's your position on Claxton?

MR. MAZUR: I'm sorry, your Honor. I'm confused.

THE COURT: Aren't you listening to what he is saying?

MR. MAZUR: What he is saying is there is no evidence that Claxton took part in a similar act. What I say, your Honor, is he made the statement at the time of his arrest which is false on its face as to why he was driving the get away car. He says he went into the bank to make change and then he was assaulted by a man at gun point. Well, during the bank robbery I don't think the bank -- it is a fair inference the bank wasn't making change for people and he states he was in the bank --

THE COURT: I think this is poorly phrased. It seems to me that the way I should put it is this: If you find that either of the defendants engaged in another bank robbery --

MR. MAZUR: I would say another similar bank robbery or another bank robbery would be all right.

THE COURT: You are having me state that there is evidence they did.

MR. MAZUR: I don't seek to do that. If you find beyond a reasonable doubt that--

THE COURT: I am not going to keep saying beyond a reasonable doubt. If you find that the defendant engaged in other similar bank robberies, either of the defendants, rather, engaged in other similar bank robberies, such acts may not be considered.

(Pause)

You may consider such evidence in determining whether he is indeed the individual the government claims participated. It should be such evidence on the question of identity, the issue of identity.

MR. CIAMPA: Only.

THE COURT: No. That is, whether he is indeed the individual who robbed the Chemical Bank. You may also consider it on the issue of whether the robbery of the Chemical Bank was part of a common plan or scheme by the defendants. I will put in proper English.

MR. MAZUR: I think you should include it should not be considered on character.

THE COURT: I don't think that means anything to them. I am open to suggestion. I don't think it means a thing to a jury, to say that. What am I talking about? You can't consider that he was a bad man or something like that you want me to say?

MR. MAZUR: You can't consider it on the

question of whether -- on the issue of his character as a bank robber, his character as causing him to commit bank robberies. All I am asking for is the language of the rule because I think it is important.

THE COURT: I am not going to give it in the language of the rule because I think the rule is unintelligible to a jury.

MR. MAZUR: There should be some language that maybe we can agree on.

THE COURT: Maybe we can but I won't give it in the language of that rule.

MR. CIAMPA: I have a charge, your Honor, that I have written out.

THE COURT: This is a separate sentence. You may not consider such evidence --

MR. MAZUR: As tending to show he was a bank robber and therefore committed the Chemical Bank robbery.

MR. CIAMPA: Your Honor, I have a charge that may cover that.

If you find that a defendant in this case was involved only in a bank robbery which is not charged in this indictment, you may not convict him.

MR. MAZUR: I don't think so.

(Pause)

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I will have to do a little study on that.

MR. CIAMPA: My other problem was with the charge as to inference: the statements tending to show innocence if the defendant. That would have you characterize the testimony of two government witnesses who both agree that the defendant --

THE COURT: I obviously won't characterize. I said I will give these in substance.

MR. CIAMPA: The charge is request number 14 to the effect there has been --

THE COURT: Here is what I am going to charge: There has been testimony that the defendant Claxton made a number of statements tending to show his innocence at the time of his arrest. There is also testimony that these statements were false.

MR. CIAMPA: What testimony? There has not been any.

MR. MAZUR: I think it should say the government contends these statements are false rather than there has been testimony.

THE COURT: All right.

MR. CIAMPA: Your Honor, I'm sorry, I have to disagree with that.

THE COURT: I will charge on a false exculpatory

statement in a way that does not -- that leaves it to them to decide whether there is a false exculpatory statement.

MR. CIAMPA: What I am saying is that the government just now admits, and I agree, there is no evidence tending to mitigate against the exculpatory testimony. For you to say the government contends that it is false is to put something that's not in evidence.

THE COURT: Is there any evidence that it is false?

MR. MAZUR: Yes, the statement itself is evidence that it is false. The statement says that he walked into a bank and was making change and walking out when the robbers were leaving. I don't think that bank made change during the middle of that bank robbery.

MR. CIAMPA: No such statement.

MR. MAZUR: There is. There is also a statement that the defendant said his name was Clifton Herbert or Herbert Clifton and that he later said his name was Walter Claxton. There are other eyewitness identifications that point him out as Claxton.

THE COURT: I think there is sufficient evidence from which a jury could find a false exculpatory statement. I will charge it in such a way that it is up to them.

MR. MAZUR: I didn't hear all of the rulings on Mr. Doyle's requests to charge. I heard you say you would

give the McNally charge on eyewitness identification in substance.

There is request number 2 on pre-trial identification procedures. If that charge is to be given there is one modification. I think that the McNally charge that you gave was a situation where the question on the pre-trial -- where the pre-trial identification procedures, the photo spreads or lineups were being admitted to impeach the in-court identifications as being impermissibly tainted. That's what the last paragraph of that charge seems to be talking about.

In this case you will recall the government offered those statements as evidence on their own as part of its direct case, not as tending to show that the in-court identifications were true but under Rule 801(d)(1)(c) as tending to show these men robbed a bank. So I think it may be the defendant's contention that the photo spreads were impermissibly suggestive and that they tainted the in-court identification. That's not the government's view of what they are about and you already ruled they were not impermissibly suggestive as part of the pre-trial rulings.

THE COURT: Yes, but you have it both ways, is what your problem is here. They go for the point you say

but they also go to in-court identification.

MR. MAZUR: All I say is that the charged--

THE COURT: If you pick somebody out of a photograph a month before the trial, that obviously stimulates what you are going to say at the trial. That the pre-trial was accurate and none-suggestive, I don't see that anything comes from that. The question is still whether the in-court identification is any good.

MR. MAZUR: It is that and it is also whether the pre-trial identification was in good. It is both. All I say is that the last paragraph of your McNally charge, only talks about one of the purposes for which it was offered.

THE COURT: All right, I will do my best.

Have you ruled on Mr. Doyle's requests 3 and 4?

THE COURT: Yes, I said I would grant them in substance.

MR. MAZUR: It seems to me 3 and 4 are cumulative. They are just saying the same thing twice. The government has no objection to 3. Although I think that's beyond what the Barry case holds.

THE COURT: Here is what I think I will charge on the confession. Let me see what you think of this, Mr. Doyle. See what you think of this on identification. (handing)

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Then we will get to this business of voluntariness of the confession.

(Pause)

MR. DOYLE: Judge, I think one point I believe you did focus on in McNally and it doesn't seem to be focused here is the positiveness of the identification both prior and present; that is, whether the witness was positive or whether she simply said it looks like and that being a factor that should be taken into account.

MR. MAZUR: I think that is in this charge.

MR. DOYLE: I was just looking at the in-court section.

THE COURT: We can write it in. What do you want to put in?

MR. DOYLE: Whether the identification --

THE COURT: Where do you want to put it? Write it in in pencil and I will see what it looks like.

Will you buy this: You may not consider such evidence tending to show that either defendant was of such a bad character that he was likely to rob banks, something like that?

MR. DOYLE: Frankly, I would just as soon leave that out, from my viewpoint, because I don't want to remind the jury of that thought. I would rather you tell them

what it is being admitted for and only for that.

MR. MAZUR: If both defendants agreed to that I don't have any objection.

MR. CIAMPA: If there is anything in the charge that says they must convict them of the robbery in the indictment only, to just make that clear. If they feel he did the Brooklyn one and not the Manhattan one, they can't convict him.

THE COURT: I get your point.

MR. CIAMPA: May I suggest a wording? If you find that a defendant committed robberies not charged in this indictment, namely, the Chemical Bank at East 86th Street, and you find that he did not commit the robbery at East 86th Street, then you may not convict him. That is certainly the law. I am wondering whether a layman would understand that they are not being charged from the beginning, the indictment will be read and the statement will be read that they are charged for this robbery only.

THE COURT: I think there is room for confusion.

We will work on it. It isn't something that just readily comes out.

MR. MAZUR: We object to its restatement in somewhat stronger fashion of the immediately preceding

paragraph which talks whether the identification case was certain or uncertainty. He is asking you to say it twice in two different ways. It is with respect to the charge on eyewitness identification.

THE COURT: How would you buy this: For quick, certain or positive or hesitant, uncertain and unsure, something like that?

MR. DOYLE: That's good.

MR. MAZURE: That's satisfactory.

MR. CIAMPA: Okay.

THE COURT: Is that all right on the pre-trial identification?

MR. DOYLE: Yes. Then we should make the same change with regard to the in-court.

THE COURT: We will make the same change.

(Pause)

MR. CIAMPA: While they are looking, another problem, Judge. Request number 15 is totally at odds with the evidence. It says "In the present case"--

THE COURT: I don't know that I am going to give 15. I said the substance. I didn't say verbatim.

MR. CIAMPA: My objection would be in the present case the government claims that the defendant Walton Claxton used the name Clifton Herbert when questioned

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about a bank robbery.

The defendant said he told them his name was Walton Claxton when he was questioned about the robbery; that Clifton Herbert was to get his license to drive the cab. That's the government's witness' testimony. I don't see how he can have you say something other than what's in the record.

MR. MAZUR: The record is that he used the name Clifton Herbert at the time he was questioned by the agents at G & J Auto Repair and only subsequently when he got down to the station house that he admitted his name.

THE COURT: I am going to say if you find he gave a false name, is what I am going to say. I will let you talk about the evidence. That is your job.

MR. CIAMPA: In order to avoid, you are going to say that. If he gave a false name to get a hack license. I agree with everything except the last part. It would be all right with me if you didn't give it at all.

THE COURT: What do you want to do with this?

MR. CIAMPA: 15, Judge, right in the back there.

THE COURT: Here is what I am going to charge. If you find that the defendant gave a false name when questioned about the bank robbery--

MR. MAZUR: It is really not the bank robbery

because it is not the Chemical Bank robbery.

MR. CIAMPA: That's why I think you should leave it out. It is a prior similar act, so remote. Plus the fact the government witness said he gave him his right name and told him he did this to get the hack license.

THE COURT: Wait. Gave a false name in order to mislead the agents to avoid identification, you may, but need not, infer consciousness of guilty.

MR. MAZUR: That's all right with the government, your Honor.

Your Honor, we have adopted these photographic identifications, in-court identification charges. Except one portion of this charge which relates to photographic identifications and says "whether the witness was able to identify the defendants as the robbers at times prior to the viewing sessions." I don't think that's applicable in this case.

THE COURT: It isn't. It obviously isn't applicable. How would you phrase it?

MR. MAZUR: I would eliminate it as being inapplicable to the facts in this case.

THE COURT: Any objection to eliminating that?

MR. DOYLE: No, your Honor.

THE COURT: All right. Did you get into the

voluntary confession?

MR. DOYLE: I think it is excellent, Judge, as far as it goes.

THE COURT: You want me to tell them they should not consider it at all?

MR. DOYLE: I think my request number 4 which includes the additional point of leniency or other reward is also relevant. It is a factor that the Supreme Court also refers to.

THE COURT: Let me see it.

(Pause)

THE COURT: This is too strong. I can't blame you for trying. The idea is not bad. These are factors which they should consider and I am quite willing to put it that way, in determining whether it is voluntary. But the conclusion that they should find that it is not voluntary because of these things, no. Factors they should consider.

I think I have covered that sufficiently.

MR. DOYLE: Judge, that was the request to charge that the trial court refused to give in the Barry case. That was the case where the Court of Appeals reversed because it didn't give the jury the necessary charge on--

THE COURT: Did it have anything like this, were

there any promises or representations by the agents made to the defendant?

MR. DOYLE: That's where he got the language in the Barry case. The long line of Supreme Court cases, Haynes v. Washington, which say that if a confession is induced by a promise or a threat, then it is involuntary. I think the jury should be told that.

MR. MAZUR: In the Barry case the Court of Appeals suggested a much shorter statement of the fact the jury must consider whether the confession is voluntary. My request number 14 which you indicated it was declined as unnecessary, it would be unnecessary if you give the charge you suggest.

As far as the things Mr. Doyle points out they are for argument by the attorneys.

THE COURT: We will work something out. I will have to read Barry. I'm not familiar with that or haven't read it in a long time.

Any others?

MR. DOYLE: Just one final point on the confession point. The last sentence of my fourth request is a sentence that is taken directly from the statute which says that the court shall instruct the jury that it should give to the confession whatever weight it deems appropriate. I think that language has to be in the charge. Both under the

language of the statute and Barry. So that even if your Honor takes out or modifies what is above that, that part of it would --

MR. MAZUR: That part is in the government's request as well.

THE COURT: All right. We will give that. We will work it out.

Thank you, gentlemen.

(Adjourned to December 2, 1976, at 10 A.M.)

* * *

THE COURT: Good morning.

Proceed, Mr. Mazur.

MR. MAZUR: May it please the Court, Mr. Doyle and Mr. Ciampa, Miss Harris, Mr. Foreman, ladies and gentlemen of the jury: Remember in my opening statement I told you about the bits and pieces of evidence that you were going to hear in this trial? Well, now you have heard them and each and every one of them and you have heard quite a bit more. Just like I said. At this time it is time for you, ladies and gentlemen, to perform your function and to put those bits and pieces together. This summation is to help you do it.

Let's talk about the defendant Walton Claxton first, the man in the white hat. First you heard Velma Graham tell you from that witness stand that she believed and it was her best recollection that the defendant Claxton was the man in the white hat who robbed the bank. She saw him when he first came in the door behind Mr. Herst, her regular customer. She thought he might be her son and she took special notice of him. She took even more notice when instead of walking behind Mr. Herst in the tellers' line he stepped over the rope, which is not what customers do when they are there to make a deposit or a standard withdrawal. And there he was in the feed line to the

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tellers' counter. I think we have it on the exhibit here. He was here, she was here at station number 5. It is not a very long distance. And she saw him and she was looking at him. And she told you that she did. Her best recollection is that that was the man.

Now, Mr. Claxton's attorney made a big point before you about how Miss Graham couldn't be 100 percent sure that he was the guy in the white hat. How many witnesses do you think can be 100 can be 100 per cent sure of an identification they make in a robbery three months before a trial? Not very many. And that's why, just 11 days after that bank robbery, the FBI went to Velma Graham at the bank and they showed her a spread of six photographs. They showed her Government's Exhibit 7. They are in evidence and you will see them. You will see the similarity in the people's appearance, you will judge whether it was suggestive or not suggestive. And you remember the testimony she gave and that Samuel Wichner gave. He brought out the six photographs. She immediately picked the photograph of Walton Claxton, 11 days after that bank robbery.

Her signed statement about that that is Exhibit A. You will take it into the jury room and you will consider Exhibit A.

Now, some of you might think that would be enough

but there is more, a lot more. Because when he had Kotz, the branch manager took that witness stand, he told you that when he heard the commotion up near the front of the bank he was back here, down there in the officers' section where you will see his initials. When he heard the commotion he pulled a little switch under his desk which did two things: Activated a silent alarm at their security center, and started those surveillance cameras clicking away. Either he did or somebody else pulled another switch in the bank. And the results of those surveillance cameras are in evidence before you. They were passed around among you, and you had the opportunity to compare the pictures, Exhibits 4 and 5A, which are the photographs of the man in the white hat with the defendant Walton Claxton.

Now, the government does not contend, ladies and gentlemen, that this is a portrait of Walton Claxton. Sure he is wearing a white hat, he has on sun glasses, and it makes you work a little bit. But you will do that work, ladies and gentlemen, and you will decide whether or not the facial characteristics of the man in the white hat as shown in those photographs are this man or somebody else.

Now, that might be enough again, but somebody might say well, just because Velma Graham believes that

that's him and just because Velma Graham picked his photograph out immediately 11 days after the robbery and just because these photographs look like him, maybe will say that he was born unlucky, he was born looking like the man in the white hat that robbed the Chemical Bank on August 30th. Let's say one of you say that. Well, if that's true, then he is truly the unluckiest man that ever walked the face of this earth. I submit that to you because just nine or ten days later, on September 8th, over in Brooklyn at 2084 Linden Boulevard, Manufacturers Hanover Trust Company, he had his second major bad break in that short period of time. Because what happened, according to his statement, he was making change in that bank and a man with a gun held him up, forced him into his gypsy cab, forced him to drive around and he got caught five hours later by the FBI in the getaway car.

So you have to believe two things, ladies and gentlemen: First that he is a dead ringer for the guy in the white hat; secondly, that he had the second blow of bad luck to be kidnapped by the bank robbers nine days later and forced to drive that getaway car.

Well, some of you might not think that was enough. Let's talk about what happened in that Manufacturers Hanover Bank robbery on September 8th. Remember Patrick

Price testified that he caught the license plate on the getaway car. Remember George Farrar testified that he had rented that getaway car, the gypsy car, the gypsy cab, to Walton Claxton. Remember Allen Garber of the FBI testified that he drove up into Mr. Farrar's place of business just five hours after the Manufacturers robbery that day. And let's look at little more closely about the story he told about that robbery because I think it is instructive.

The first thing he said is his name is Clifton Herbert. He lied about his name. Then he really stretched some. He said he was at the bank making change, he was walking out to his gypsy cab and he is accosted by a man at gun point.

Ladies and gentlemen, you know that there is not a chance in the world that that was so. How do you know? Because the government and the defendants have all agreed that this roll of film is the surveillance photos from that Manufacturers Hanover Bank robbery. The government and defendants have all agreed that Exhibit 19 is photographs printed from that bank robbery. You are going to take a look at each and every one of these photographs when you get into the jury room, Exhibit 19, and you are going to ask jurors whether or not there is a photograph of Walton Claxton or any customer making change during the course

of that bank robbery. You are going to search far and wide for his picture in that bank or bank robbery surveillance photographs because his picture isn't there.

Now, what does he say he did -- in addition, ladies and gentlemen, what he is asking you to believe is that the bank went and transacted its normal course of business while this bank robbery was going on. Look what was going on. First of all, you see the pictures of Kim Cranshaw with his gun on the bank guard, then his gun on these two little children in the lower right-hand corner. You see men jumping over the tellers' counter. You see another man commandeering the front of the bank. You think the bank was making change for Mr. Claxton's 60 one dollar bills during that bank robbery?

Now, let's talk about what he said happened after the bank robbery. He was forced to drive this way, then that way, to turn right, then left. He was forced to abandon that can down by the Belt Parkway. And what did he do? He ran. Where did he run to? To make a telephone call. He was going to call the police but then he was afraid some of the robbers might get him. Maybe he was afraid really that the police would get him for the bank robbery.

In any event, what did he do after the telephone call?

He called the bank to find out, according to him, if anybody was hurt. When he found out nobody was hurt he had lunch. Then he said he went to sleep on a park bench. Then he had a stroke of genius. Maybe the men didn't steel my cab. Maybe if I go over I'll find the cab again. He went back, according to him he found the cab with the keys on the seat. And what does he do after this very harrowing day when he was kidnapped at gun point and forced to drive a getaway car in the robbery? What does he do? He goes around and picked up a few fares and goes back to taxicab driving as if nothing happened; that is, after lunch and a nap.

Then he drives up to the waiting arms of the FBI and he makes these statements. He was advised of his constitutional rights. He said he understood those, and he made the statements. Those are the statements that you, ladies and gentlemen, have to evaluate and the judge will tell you what effect you can give to them.

Now, let's think about the Manufacturers Hanover robbery on September 8th as it relates to the Chemical Bank robbery on August 30th, which is, of course, the only one you have to make a determination about. Those two robberies were pretty darn similar, weren't they? Three armed men in each bank. Cranshaw jumping over the tellers'

counter in each bank. One man taking up a position by the door and controlling the entrance to the front door in each bank. One man waiting outside driving the getaway car in each bank. No real disguises worn by any of the men in the bank, no nylon stockings over the head, no whole woolen masks. Hats and sun glasses in each bank. You know and you will consider that those robberies were part of a common scheme and plan among these two defendants and others to rob banks, and you will consider whether or not this Manufacturers Hanover robbery wasn't conducted in what can be considered Cranshaw and Claxton's trademark. That's the way they rob banks. And they did it again on August 30th.

Now, Mr. Claxton's attorney brought out some things before you and I think we ought to consider what they were because they are pretty instructive. First he brought out from Special Agent Wichner that there were eight or nine other people in the Manufacturers -- excuse me, in the Chemical Bank on August 30th who had seen photo spreads. He didn't bring out which photo spreads they had seen. He didn't bring out where in the bank they were located in relation to the white hat. But he is trying to make the point that other people in the bank could not pick him out.

Well, that depends a little bit on the circumstances,

where they were situated, whether they had an opportunity to see them, as Mr. Kotz said some were laying on the ground, whether they were otherwise occupied by others of the bank robbers. That brings me to the defendant Claxton's witness, Jeffrey Horton, teller number 3. Jeffrey Horton got up on that witness stand and he told you, and you have to evaluate his demeanor, but he told you he saw the man in the white hat and on cross-examination he said he saw him throughout the robbery and that that man was a light skinned black male.

He also told you that that man was carrying a silver gun, and that was it.

Well, you know from Velma Graham that that was one of the men that Kim Cranshaw cleaned out his cash drawer during the bank robbery. Whatever he says about the man in the white hat, you have a surveillance photo of the man in the white hat. He doesn't have light skin. He has dark skin.

You also have Exhibits 1, 2 and 3 and you will be able to see that there was a light skinned black male involved in this robbery who was carrying a long silver gun. It was the man who went back to the officers' area and held the gun on Mr. Kotz, and he told you about that.

Now, he is not on trial, that man who held the

gun on Mr. Kotz. These two men are. And the government's contention is that the defendant Claxton was the man in the white hat and Jeffrey Horton at best is wrong.

Now, Mr. Farrar was called as a defendant's witness after the government had called him first. He came back then. What did he tell you? He told you a very crucial piece of information, that on August 30th he had a record showed Claxton paid him $90, the rental on the gypsy cab. Does that establish that he didn't rob a bank that day? On cross-examination Mr. Farrar said his record didn't reflect what time Mr. Claxton paid him the $90. He had no recollection of the time that Mr. Claxton paid him the $90. And he had no idea what Mr. Claxton did with that cab that day, whether he was driving that taxicab earning fares and paying the $90 out of those fares, or whether that $90 was part of the proceeds of the Chemical Bank robbery. But whatever, you will evaluate that proof for exactly what it is worth.

Now, what is Mr. Claxton's other great defense? Remember the fingerprints on the tellers' counter? He brought out that the FBI obtained three fingerprints from the tellers' counter in the Chemical Bank and then he brought out, and the government agrees, that the FBI could not connect those fingerprints with Claxton.

Remarkable. Look at the surveillance photos, they show clearly that the man in the white hat never touched the tellers' counter. And we can assume, I believe, that thousands of customers touched that tellers' counter. The tellers' touch the tellers' counter, but the only person that doesn't touch the tellers' counter, or one of the people that does not, is the man in the white hat. So those fingerprints don't tell you very much.

Now let's consider the defendant Kim Cranshaw, the guy who likes to jump over tellers' counters. The evidence against him is truly overwhelming as well. Velma Graham,who sat on that witness chair, sworn under oath, and said that's the man that jumped over the tellers' counter, that's the man that pointed the gun at her. That's her best recollection.

On September 30th, one month after the robbery, she was shown the photo spread, Exhibit 9. You will look at the photo spread and decide whether it was suggestive in any fashion that she should pick out the picture of Cranshaw, Exhibit 9A. It was spread out in front of her, she hesitated between two people and said that it was the younger guy and she picked it out. This is her signed statement for that day. You will evaluate that as evidence.

Again, she doesn't say she is a hundred percent

positive. The government doesn't contend that she has to be a hundred percent positive or that she was, because there is much more evidence before you. Remember, the surveillance photos, Exhibits 4 and 4A, those show the man who jumped over the tellers' counter. Those exhibits, ladies and gentlemen, require you to do a little bit of work. The man was wearing a hat, the man was wearing a wig, the man was wearing dark glasses. But there is enough of his face for you to consider whether or not that man is Kim Cranshaw. But let's say that some of you say those photos are not good enough. Mr. Cranshaw told the FBI that that was him. Here is Exhibit 15. It is in evidence. Here is the handwriting on the back. "This is a picture of me, Kim M. Cranshaw."

Now, that was part of his confession to this bank robbery and to three other bank robberies, including the Manufacturers robbery on September 8th. You have to consider that confession very carefully.

Let's consider the circumstances for a moment. He was arrested by Jack Lyons down in Brooklyn, advised of his constitutional rights and to which he said he understood. He was then turned over to the FBI, Samuel Wichner and his partner. This is the evening of October 7th.

Now, what did Samuel Wichner do when he took custody of this man? He advised him of his constitutional

rights. The man said he understood his rights. He said he had a year of college, and Sam Wichner told him that I don't want you to talk to me now but wait until we get back to headquarters.

Now, what else did Sam Wichner get from Jack Lyons in addition to Kim Cranshaw? He got Exhibit 13, the five photographs of Kim Cranshaw. They are in evidence before you. You will have them in the witness room. You will see pictures of Kim Cranshaw leaning on a Rolls Royce wearing some rather nice suits. You will ask yourself where he got the money to buy those suits. And you will particularly focus on Exhibit 13A, two men, Frank Lewis on the left, Kim Cranshaw on the right. That was another part of his statements.

Let's go back to the statements for a minute. We are in the car, Sam Wichner is telling Cranshaw that he would like him to cooperate in the FBI's investigation. The FBI is charged with solving bank robberies, apprehending not only Kim Cranshaw but others who may have been involved in these bank robberies. They tell him if he does cooperate they will bring that information to the attention of the United States Attorney's office, that the U.S. Attorney's office may bring it to the attention of the judge who would ultimate sentence him. They tell him, although when he asks

for guarantees that nothing bad will happen to him, that he will be treated leniently. No guarantees. We cannot guarantee you anything. However, we will bring it to the attention of the U.S. Attorney's office, but no guarantees.

Now, Special Agent Wichner says to you I was trying to get him to talk. Of course he was. That's his job. But he did not overstep, he did not overbear this man who is a high school graduate and has one year of college. They did not overbear his will. He understood no guarantees. That's English and it is simple.

Now, what happened in the car? He said that was himself, that was Bubby. He later said Bubby was Frank Lewis.

Then we get to McDonald's. They had dinner, they got hamburgers and had dinner over FBI headquarters.

What happened over dinner? Again advised of his constitutional rights, again he acknowledged he understood, and he signed Exhibit 14 which details the rights and says that I waive them and I am voluntarily making this statement. And he makes the statement.

First he signs his name on the back of Exhibit 15, and he says I was in that bank, I jumped over the tellers' counter. Frank Lewis drove the getaway car. Frank Lewis planned the robbery and provided the guns. Then he talks

about the Manufacturers robbery. He is shown photographs, Exhibit 16. He says the second photograph, the man with the glasses and the gun, is him. He says he robbed that bank. That Frank Lewis controlled the front area of the bank and that that's Frank Lewis. Then he talks about the getaway. They left the bank, they jumped in a car and they drove off and there were shots exchanged, and he told you about that. He told you there was a rifle thrown out the window. He told this to Sam Wichner who told it to you.

Then he said that as far as Frank Lewis goes, that he was supposed to meet him that very day in a Harlem bar to plan a bank robbery for the following week. That day, October 7th, the day of his arrest he couldn't meet Frank Lewis, he had been arrested already, but he was supposed to meet him in a bar to plan more robberies with Frank Lewis.

Now, he also talks about some other bank robberies. He talks about robberies at the Prudential Bank in Brooklyn. He is shown the surveillance photograph off a videotape from that Prudential Bank robbery on July 29th. This time he didn't wear a disguise. This time you can't conceivably have any difficulty in believing that that's him. And he says he robbed that bank first because his mother needed money, and that then he gave her the money. And then a

second time with Frank Lewis, his general bank robbery partner.

Now, let's see if there is any corroboration for the fact that he jumped over the tellers' counter in the Manufacturers robbery. You are going to have Exhibit 19 before you, which are the surveillance photos of that robbery, and you are going to see a man, first with his gun on the security guard, then jumping over the tellers' counter, and then running out of the bank.

Exhibit 20 is a blowup of one of those photos, the first picture in Exhibit 20. You will know that that is Kim Cranshaw.

So what it really boils down to on Kim Cranshaw's statement is whether it was coerced from him, whether it was false and whether he just admitted to the Chemical Bank robbery because the FBI was pressuring him and promising him things, or whether he admitted to the Chemical Bank robbery because when the FBI shows you a picture of yourself robbing a bank you think that maybe at that point the game is up. That may appeal to you ladies and gentlemen, as the more reasonable explanation, that rather than promises or threats which, by the way, didn't take place because there were no guarantees ever given; but being confronted with photographs like this and this and Exhibit 18, establish

in the mind of a man that perhaps the game is up.

Ladies and gentlemen, the government submits there can be no question that Claxton was the man in the white hat during the Chemical Bank robbery. There can be no question that Kim Cranshaw was the man who jumped over the tellers' counter in that robbery. The government is confident after you put together all the bits and pieces of evidence before you and consider each and every one of them carefully, that you will return a verdict of guilty as to each of these defendants. You will determine that they robbed that bank on August 30th and they did it with guns. Thank you.

MR. DOYLE: Mr. Foreman, ladies and gentlemen of the jury, your Honor, Mr. Mazur, Mr. Ciampa, at the beginning of the case I told you that from listening to the government's presentation of what the evidence would be, that there were going to be three different types of proof that were to be presented in support of the government's claim that Kim Cranshaw participated in the robbery at Chemical Bank. You will recall that those items of proof were one eyewitness identification, some photographs, and a confession.

Now, before I get to discuss those areas of the evidence with you in detail, I would like to first do two things: I want to remind you of two basic premises that we

all will operate under that will govern your decision-making in the case. The first is very simply that it is the government that has the burden of persuading you as to each and every element of this case.

Secondly, that burden is that they must persuade you beyond a reasonable doubt, beyond any doubt that would cause you to hesitate in making an important decision in your lives. And the reason I state those two things at the outset is that as we look at the different items of proof you will have to remember that it is not Kim Cranshaw who has the responsibility of disproving what the government would like you to infer, but it is the government that has the burden at all times of persuading you beyond a reasonable doubt that the evidence that they have put before you establishes the conclusions that they have asked you to draw.

Now, the second thing I want to take up with you before we get to these main items of proof that the government has represented to you constitute a case against Mr. Cranshaw, two items that are out of those categories that came up during the evidence in the trial that should be dealt with and which were not outlined in the opening statements. The first are a series of photographs that I believe Officer Lyon testified were found on Kim's possession when he was arrested that day in October. I don't

understand what they have to do with this case. Except perhaps as to Government's Exhibit 13A in evidence which is a photograph that shows someone who has been identified as Frank Lewis, and we will talk a little more about Lewis later. Other than that -- and they will be among the exhibits that you will look at in the jury room -- they have no relevance to anything that is before you for consideration. They have nothing to do with bank robberies. They really are personal photographs.

Mr. Mazur didn't ask you to draw any inferences from them, and I really only call them to your attention because they are in evidence. I call them to your attention really to demonstrate to you and to point out to you that although they are in evidence, they prove nothing, absolutely nothing about bank robberies. That's what this case is about, bank robberies.

Now, the second area that I want to talk about before we get to those main items is the fact there has been evidence in this case about other bank robberies. Now, you know that there is an indictment in this case and that that indictment concerns itself with one charge. That charge has to do with the Chemical Bank here in Manhattan up at 86th Street and York Avenue and some events that took place on August 30, 1976. And the only issue that is

before you in your deliberations and the only issue that you must decide in coming in with a verdict in this case as to either of these defendants is whether or not they, and addressing myself particularly to Mr. Cranshaw, my client, participated in that bank robbery. That's the only issue that concerns your verdict. And this is really one of the most serious responsibilities that a jury has, which is distinguishing and separating out in your deliberations and in your verdict matters that are extraneous, matters that should be set apart in your deliberations from the main issue.

If you might conclude that Mr. Cranshaw did something in Brooklyn on one or more occasions, that doesn't mean that he did something in Manhattan on the occasion of August 30, 1976. It doesn't mean that at all. And you have to have the courage, ladies and gentlemen of the jury, to face up to what is really a very solemn responsibility in this case, which is not to concern yourselves with what other courts and other juries might have to say about the evidence that has come into this case concerning what happened in Brooklyn, before and perhaps after this bank robbery. Your responsibility, and it is to the court and to your own conscience, is to decide whether the government has proven a case against Kim Cranshaw with respect to this bank

on this date, or whether they have failed to carry that burden.

If upon reviewing all of the evidence in this case, you conclude that they failed to carry that burden, as I am satisfied you will, then you must have the courage and you must have the faithfulness to your own conscience to come in with a verdict of not guilty, even if you believe that he may have committed some other bank robberies, because they are not your concern, they are not this court's concern and we don't have jurisdiction over them. That is very, very basic in your consideration of the case.

Now, let's look at what we said in our opening statements with the main items of proof in this case and let's analyze them one by one. First of all, we have the eyewitness identification of Velma Graham. Now, as Mr. Mazur concedes to you, as he must from the very fact that the witness has said it herself, she is unable to make a positive identification of either one of the persons. She said, and it was very clear, that the best she can do, so to say -- and now I will address myself simply to Mr. Cranshaw, my client -- that he looks like one of the people who participated in the bank robbery.

Now, as you know, that is not compelling evidence. Any one of us could look like someone who committed a bank

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robbery and that doesn't mean that any one of us should be sitting behind that defendant's table. So the evidence really isn't enough to carry this case very far. Particularly it is not enough because of the way Velma Graham outlined the way she goes about making these identifications. Her thought process. If you think carefully about how she testified she went about looking at the photographs, which were really closer to the events than the time of the trial itself and, her recollection was undoubtedly somewhat clearer as to the features of the individuals involved in the robbery, and I want to show you the lineup of photographs that Miss Graham examined at that time.

It is really very interesting the way she explained it. She said that she looked at the photographs, and there are six of them, and she said that after looking at them she picked out two as looking like one of the persons at the bank, the person who had vaulted over the tellers' counter. So she was asked to focus on one person in the bank robbery. But what did she do? She picked out two people. That's what she told you she did. Those two people were the gentleman who is depicted in Exhibit 9B, and the number is on the back of it, in evidence, this individual (indicating); then she picked out a picture of Kim Cranshaw.

So you can see how Miss Graham goes about

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reconstructing these things. She views this as a process whereby she will select the person who looks most like the person who did the bank robbery, but it really is not an identification that this is the person who did the bank robbery. Then she decided that because Mr. Cranshaw's photograph depicted a younger person, that he was the person who obviously -- and I think you can infer this from her testimony -- looked most like the bank robber from this series of photographs.

So that you have a witness, and this is the only witness who has made any identification in context with this bank robbery, who has a very loose and flexible way of going about and making these identifications.

Now, there are some other factors that are very important in thinking about Miss Graham's testimony. She never had an opportunity to view a lineup. A lineup would be an opportunity to see Mr. Cranshaw and five or six other gentlemen standing side by side under circumstances that would be the most critical test of whether he was or was not the person that she saw in the bank who jumped over the tellers' counter. She never had that opportunity, so we don't have the benefit of knowing what would have happened if she had had it. She only saw these photographs, and then at the trial she testified again only that the person

looked like one of the persons in the bank. That's important.

Now, another important factor about Miss Graham's identification, is that she really wasn't the person who was in the best position to observe the man the government says is Mr. Cranshaw. If you look at all the names she wrote down here on the diagram, you will see Miss Graham is over here at teller station number 5. The person the government says is Mr. Cranshaw is walking in the bank here, is coming in this way (indicating). He is the man she said was number 3. You can see that down here.

Now, standing right in front of this individual was Richards, and standing closer to this individual than Miss Graham were three other people: Price, Horton and Rebecca. None of those witnesses were brought in to make any identification. None of them.

MR. MAZUR: Objection.

Q Let me particularly point out to you, this has to be Mr. Richards in Government's Exhibit 15 in evidence. Look where he is situated. he is standing right directly opposite the person they say is Cranshaw, in a much better position than Miss Graham to make an identification. But we have no testimony from him or from any of the others who were in that position.

See, there is Mr. Richards there, the gentleman

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opposite that person.

What that does, ladies and gentlemen, is highlight the unreliability, the tentative nature and the very shaky, flimsy nature of that identification. So it has very little weight in deciding whether or not Kim Cranshaw was in the bank that day. Certainly not compelling, persuasive evidence of it.

The second category of proof which the government says establishes that it was Cranshaw in the bank are the photographs themselves of that bank. And I think that probably a very revealing way of examining these photographs and deciding whether they support the government's theory of this case that this was Kim, or whether in fact they do not demonstrate that the government has the wrong man here, is to compare these photographs with photographs that we know are Kim, in addition to your own observations of Mr. Cranshaw here in the courtroom.

If you look at the photograph of Mr. Cranshaw which appears in the set of photographs, Government's Exhibit 9A in evidence, that's obviously Kim. You can tell right away. Look at Kim, look at the photograph. Is there any hesitation? None, no hesitation.

Look at, for instance, this photograph of Kim, one of the photographs that were found by Officer Lyon in

the series that has been marked Exhibit 13 in evidence. If you look at that photograph, ladies and gentlemen of the jury, you will see, and I don't want to take time to pass it around now, but you will see without hesitation in looking at it, sure, that's Kim Cranshaw. Look at him, look at the photograph. But then look at these photographs that the government says are photographs of him in the bank. They are not Kim Cranshaw. The face is obviously a different face. You can look at it from any angle and keep looking at it in the jury room, and I'm sure you have seen them all carefully, looked at them once already as they were passed around. It simply isn't Mr. Cranshaw.

Now, you remember that height was a factor. Miss Graham testified that she initially or that her present description in the courtroom was that the person was five foot nine or ten. Now, we know from Mr. Wichner's testimony that Kim Cranshaw is six foot one. That's a very major difference in height. You can see this is a short person. He is not six foot one, the man standing there at the counter. You can tell from looking at these photographs that he isn't.

So that the photographs don't establish the government's case. They disprove it. The photographs, very simply, ladies and gentlemen of the jury, demonstrate

to you that the government has the wrong man here. And that is the issue before you. Not whether they have the right man for some other bank robbery somewhere else, but whether they have the right man for Chemical Bank on August 30, 1976. And the answer to that is no.

Now, finally we get to the area of the case which I indicated to you in the opening statement was going to be interesting and perhaps puzzling. The government says there is a confession, and isn't a confession proof positive that Kim Cranshaw did this crime and doesn't that really end any serious consideration of the issue as far as his guilt or innocence is concerned?

Well, I submit to you that after you think carefully about Agent Wichner's testimony and the circumstances of it, you are going to disregard that confession. You are going to disregard it because the government has not persuasively established to you the necessary foundation for reliability, for voluntariness, or even for the existence of many of the details of it that they say existed. Because almost everything, with the exception of the photograph which I will talk about as individual items that has Mr. Cranshaw's handwriting on it; everything else depends on the testimony of Agent Wichner as to what was said and done in that room. There are some very serious

problems with Agent Wichner's testimony.

Let's go through the problems and then take it from there. There are some areas of Agent Wichner's testimony, first of all, that just don't hang together very well. One area is that from the very outset of this in the car, he said that although he told Kim not to say anything, Kim said that he was afraid of Frank Lewis, he was very terrified of him. What did Agent Wichner say when I asked him what he said to Mr. Cranshaw about Frank Lewis? What assurances did he give him or what statements that he make that he couldn't give assurances? What did he say about Frank Lewis? If you remember, this was a very key part of this interrogation. It came up in the car and came up later. I'm afraid of Frank Lewis. Agent Wichner said he couldn't recall what he said about Frank Lewis. Do you believe that? Do you believe he couldn't recall about Frank Lewis? I don't know what he did say about Frank Lewis, but I submit that from hearing Agent Wichner's testimony you can conclude that he does recall what he said about it, but for some reason doesn't want to tell you.

Now, the second thing about Agent Wichner's testimony is with respect to the mental state and the attitude generally of Kim during the interview. Agent Wichner suggested to you on direct examination that this was a

situation of voluntary, almost spontaneous cooperation with the FBI. The FBI says that who are the benefits of cooperation. Mr. Cranshaw listens to that and he says yes, that's right, it is beneficial to cooperate and so I will sit down and give you all these details.

Well, there are some things wrong with that story. Number 1, when I asked Agent Wichner "Did you also tell Mr. Cranshaw the negative aspects of not cooperating?" He said "No, I didn't."

Do you believe that? He was trying to get my client to confess and make statements about others. Wouldn't you think he would have said to him that we have a case against you and you are facing a long time in jail? He said something about the Brooklyn jail and the Manhattan jail. Don't you think there was more said than Agent Wichner has told you about the negative side of not cooperating in describing that testimony?

Then in addition to that, Kim refused to do a number of things during this conversation. Now, what are some of the things he refused to do? They are really very significant. First of all, we don't have any signed statement from Mr. Cranshaw. We don't have a typewritten statement saying all these things that he signed. So that absolutely everything that has been submitted to you,

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except what is written on the back of that photograph, depends only on the oral testimony of Agent Wichner. Kim refused to sign a statement because he was looking for promises that the agent says he couldn't give him. So that there was resistance, not cooperation on Mr. Cranshaw's part. Suggesting that his state of mind was inconsistent with this voluntary spontaneous and cooperative attitude that has been described.

Secondly he refused to sign photographs of these Brooklyn robberies. Again, why refuse to sign them? Because he was in fact, contrary to Agent Wichner's testimony, not really cooperating.

Agent Wichner, and this is probably the most critical part of the whole question of what to do about his testimony and about this confession, Agent Wichner was asked on direct examination when he gave Kim a statement of his constitutional rights in writing and had him sign it. This is very critical, because although he said that he advised him orally of his rights in the car, the real interrogation in this case took place at FBI headquarters. That's when they sat down and said, okay, let's get to it and what's really going on here.

If the written interrogation form, his advice of rights, explaining his right to stop, have a lawyer, stop the questioning, and so on. If all of that were actually

shown to Kim and if Kim had read it and understood it and signed it voluntarily before the questioning started, then the government would have established a foundation for its claim that this is a voluntary and reliable confession. But Agent Wichner's testimony to that effect is simply not credible.

Now, why isn't it credible? Because the form Kim signed, and there is no question that Kim's signature is on this form; the question is, ladies and gentlemen, when did he sign it? This form is an absolutely extraordinary document. In the upper right-hand corner it has in Agent Wichner's handwriting the correct date, if you believe Agent Wichner's testimony that all of this did happen and that it happened on October 7, 1976, but it has a time that Agent Wichner said is wrong. The time is 6:15 P.M. Before, according to Agent Wichner's testimony, he even met Kim in Brooklyn, before there was any physical opportunity to conduct any interrogation or conversation whatscever.

Does the FBI make mistakes like that? I think you can infer they don't.

The second thing, and perhaps this is even more significant because it calls into question and demonstrates the lack of authenticity of this form in the sense that it was prepared and signed when Agent Wichner said it

was, is what is written down here at the bottom, "Kim Cranshaw," and you will notice there is nothing in Kim's handwriting saying when he signed it, no time, no date. Then under that it is witnessed by two special agents of the FBI. Now, those agents are agents Wichner, who testified here, and Agent Carney, who was the other agent with him at the time of the interrogation. These have a time of 6:02 P.M., which, again, is an impossible time, according to Agent Wichner's testimony, for the same reason I discussed with you earlier. But secondly, they have a different date. They have October 8, 1976. Now here we have an FBI agent who is telling you that we had all the time in the world, we stopped at McDonald's, we went up and had a leisurely dinner, we had a relaxed time. I kept a log of all the events, which was marked for identification and not introduced in evidence. He had plenty of time, opportunity and training in procedures and education and supervision as an FBI agent to keep proper records. If there is one thing that and FBI agent would do with his training and experience in following the procedures is to keep correct records.

Now, this document is so far from being a correct record that it is utterly incomprehensible. It is dated at the bottom October 8, 1976.

Now, in order for the government to be able to compel you or persuade you that this confession should be considered by you, they must demonstrate beyond a reasonable doubt that it was voluntary and critical to your determination of voluntariness is his being, his advice of rights and his understanding of the rights. That has to happen before the interview, not subsequently.

This document suggests, or you can infer from what is written on this document, that it was prepared after the fact. That at some point it was given to Kim to sign, long after he had made the incriminating confessions, and Agent Wichner's testimony to the contrary is simply completely incredible.

Why would an FBI agent lie to you about something like this? Why would he come in and shade the truth in some way? Isn't that incredible? Wouldn't it be logical for the government to say that he is just an FBI agent, he has no interest in the outcome of the case. But, ladies and gentlemen, I submit to you that you can find that he does have some interest in the outcome of the case.

First of all, he really was under what is clearly a misapprehension in this case, that there has been a positive identification of Kim by Miss Graham. You will recall when I went over with him his recollection of that

identification of the photographs, he said that all he remembers from that is that she picked out this photograph and she said "That's the man." Now, you know, because you heard Miss Graham testify, that that wasn't what happened at all; that she picked out two people and she said they both look like Cranshaw -- they both look like the fellow who jumped over the counter. Agent Wichner was convinced at the time he was interviewing Cranshaw that he had the right man. He had an interest at that time in getting him to confess that he was the right man. He had an interest here in court in persuading you that he had done everything in accordance with the proper procedures so that that confession that he had extracted on the back of that photograph would be accepted by you as a voluntary reliable confession. So he does have an interest in the outcome of the case in that sense. And that does explain why he would come in and alter, to some extent, the order of the events and the nature of what happened, in order to permit you to find the foundation necessary to consider that as evidence.

And an additional earmark of this, and an additional fact which helps to explain why Agent Wichner proceeded in this way in his testimony is the statement that he wrote out for Velma Graham to sign, which again states, and this is Government's Exhibit 10 in evidence, "I, Velma, have

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reviewed the facts of the robbery of the Chemical Bank," and giving the address, "Agent Wichner showed me a set of six photos. I picked out one of the photos as the individual who vaulted the teller counter on the day of the robbery. I picked him because I remember his face." Now, those are Agent Wichner's words. He wrote this and then he had Velma Graham sign it. But we have heard Velma Graham's testimony that that isn't what happened with the photographs. She didn't pick him out because she remembered his face. She picked out two photographs because they looked like the person who vaulted over the tellers' counter.

Now, why would Kim write on the back of this photograph "This is a picture of me," when we can tell and know it is not a picture of him. How do you explain that? I don't think we really have any credible evidence of what happened at the FBI headquarters because I think there are so many serious problems, or you can find from Wichner's testimony and the other evidence, that there are so many serious questions raised by this document and by the other difficulties in the store that he has told, that we really don't know what happened that night. However, I can suggest the possibility that Mr. Cranshaw, being shown all of these photographs from all of these different places, and a series of photographs from Brooklyn as well as this series of

photographs; and Mr. Wichner said this in his testimony, that here in Manhattan you have the palace of jails. That under the weight of all these circumstances, the coercive nature of the interrogation itself, the fact he had been in custody earlier that afternoon, arrested by different police officers. His Honor will point out to you there is an inherent coercion simply in being arrested, wanting to please the officers, being told there is a palace of jails here in New York; a 20-year old man would want to please the agents. Agent Wichner was trying to persuade him in getting this statement. Isn't it an easy way out, after being confronted with photographs, which Agent Wichner, the case agent in this case, that he is the case agent in this case, more important than the Brooklyn case is, as the easy way out that you would write this if you were requested by the agents? That's what happened. He took the easy way out. But it isn't Kim Cranshaw.

And for those reasons I suggest to you that in your deliberations you will reject and disregard this confession or this alleged confession and you will look to the other evidence and you will try to determine for yourselves by looking at the photographs and thinking about Velma Graham's testimony and the absence of any real concrete proof in the case. And by the way when I asked Agent Wichner

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about tape recordings, he admitted they have, and it is not surprising, at FBI headquarters in New York they have equipment to make tape recordings of these conversations. So he had the tools in his possession to give us what would have been the best evidence of what happened that night. But we never got the benefit of it because he didn't use it in this case. He said it was an unusual procedure, but in this case, even though it might have been unusual, it might have helped you and all of us to understand what happened here.

What you are going to do then is you are going to look at the other evidence in the case and decide whether that evidence constitutes a case beyond a reasonable doubt against Mr. Cranshaw.

Now, I'm sure there is not any one of you who does not have a very, very serious concern about how bad this type of behavior is, and I share that with you totally. However, your responsibility as jurors in evluating all of the evidence is in accordance with your consciences, and that is, to decide whether this evidence demonstrates that the government in this case has the right man. Because we don't serve any purpose whatsoever if we convict the wrong men for these crimes. If there may have been crimes in Brooklyn, that's somebody else's problem and not yours.

Your responsibility is to decide is did Kim Cranshaw commit this crime? And I submit to you on all the evidence that you will conclude he is not guilty.

THE COURT: Mr. Ciampa.

MR. CIAMPA: Mr. Foreman, ladies and gentlemen of the jury, your Honor, Mr. Mazur, Mr. Doyle. I find myself in the unfortunate position of being between you and lunch but I am sure you will be attentive and I will try to be as brief as I can. Indeed you have been attentive throughout the trial, and so I feel confident that your recollection of what was said will govern. What I say, what Mr. Doyle says, what Mr. Mazur says is argument. What you heard from the witness stand is what will determine who said what, and in the end whether you feel a case has been made out beyond a reasonable doubt.

His Honor instructed you at the beginning of the proceeding that my client is presumed innocent, right up to the deliberations and through the deliberations. I wanted to remind you of that and leave the province of the fact is yours, who said what and whether you believe what was said, is yours. No one can take that away from you. That's why we are still a democracy. That's why the FBI does not run this trial; you run that part of the trial.

It is not for Claxton to prove to you that he is

* * *

What is your problem?

MR. MAZUR: The only other problem is you say we called no other witnesses on identity. I think that all the similar acts and every witness the government called was on the issue of identity.

MR. DOYLE: That's covered by the rest of the charge, that other evidence has to do with identity.

MR. MAZUR: I would say no other witness from the bank.

THE COURT: No other witness from the bank on the issue of identity.

I must say, gentlemen, those are excellent summations, and I don't mind sweating it out here when I can listen to competent summations by counsel.

(In open court, jury not present.)

MR. MAZUR: With regard to rebuttal summation the government asks for just five minutes.

THE COURT: Good. I will give you a bonus if you do it in three.

(Jury present)

THE COURT: Proceed, Mr. Mazur.

MR. MAZUR: Ladies and gentlemen, it is a good thing this trial doesn't depend on lawyers looking at photographs because we seem to have a disagreement. Fortunately, that is

your job, but only a small part of your job. First let's talk about Mr. Cranshaw's confession one more time. Mr. Doyle says that almost everything Mr. Cranshaw said, except for the back of Exhibit 15, came from Sam Wichner and not from Cranshaw. I think this Exhibit 15 is a fairly major exception. "This is a picture of me, Kim Cranshaw," written in his hand in the back. But I think we have to ask ourselves whether the rest did come from Sam Wichner?

Mr. Cranshaw's lawyer said that Sam Wichner couldn't remember anything that Cranshaw said bout Frank Lewis, which is a very important topic. Fortunately your recollection of the evidence controls, and if you want it read back you can have it read back. Because Sam Wichner testified in detail about Cranshaw's statements about Exhibit 13, the photograph of the two men with the Rolls Royce, about Frank Lewis and his involvement in other bank robberies, about the fact that Frank Lewis was then driving a white Cadillac, about the fact that he was supposed to go to Chicago to rob banks with Frank Lewis but there was a dispute about proceeds and Frank Lkwis hit him over the eye, about the fact he was supposed to meet Lewis in a a Harlem bar that day to plan robberies for next week. That's pretty good detail Sam Wichner couldn't have known anything about. That's detail that came from Kim Cranshaw.

Another thing Mr. Cranshaw's lawyer says this paper, Exhibit 14, the warning and waiver is the reason in and of itself that says that Sam Wichner is a liar and that you should acquit Mr. Cranshaw.

First of all, you saw Mr. Wichner on the stand. You heard him respond to my questions, to Mr. Doyle's questions, to Mr. Ciampa's questions. You heard him, you saw his demeanor, you heard what he said. You have to decide whether that was the demeanor of a liar or someone responding to questions in an orderly and credible fashion.

Let's suppose for a moment Mr. Wichner is a liar 100 percent, then how come there are different dates and times on this paper? How come when he goes to manufacturing documents he doesn't put down the correct times that are on his log sheet? How come he doesn't do that? Remember, the FBI doesn't make mistakes, according to Mr. Cranshaw's lawyers. If they don't make mistakes, why do they make the mistake here? Why don't they write down 7:45 P.M., October 7th in both places.

Now, if Sam Wichner was lying, as I said, he could have made this document read properly. Also if he was trying to doctor it up and screwed the whole job up and bumbled it he could have ripped it up and crumpled it away. You don't need a piece of paper to make a confession.

You don't need a piece of paper to make statements about a bank robbery. You would never have had to seen it. But that's not the way Mr. Wichner apparently operates. There is a piece of paper, it says what it says and he produces it before you.

Now, what you have to do, ladies and gentlemen, is consider the confession in its totality. Consider whether it was ever given. First you have to decide that. Consider whether it was true or false. You have to decide that and you have a lot of corroboration, other evidence. Then consider whether it was voluntary or whether it was given because Mr. Wichner promised him the moon.

Ladies and gentlemen, Mr. Cranshaw asked you to believe that because he promised him that he would spend a night in the MCC, the palace of jails in New York, that's a reason to confess to four bank robberies. That's what you have to evaluate and decide.

Now, let's turn to Velma Graham for a minute, the second liar that the government supposedly called to the stand. Velma Graham never saw either of these men before in her life before the bank robbery. She is not here to put them away, with an axe to grind. She is here to give her best recollection and her best recollection is that those are the men that robbed the bank. When she saw the photo spreads she

said with respect to Mr. Cranshaw's photo spread not that there were two men there. First she focused on two. She considered two. Then she went to the one and she said "That's the guy." Her written statement is in evidence before you. You will have it. She didn't pick out two people. She considered between two people, then picked out one.

With regard to Mr. Claxton, she immediately picked him out, her testimony, Claxton's testimony.

Now, what was her testimony on direct examination when I asked her the questions? She believed those men robbed the bank. What was her testimony on cross-examination? She believed those men robbed the bank. That's her best recollection. That's all we have to deal with.

Now, I don't know how many of you ladies and gentlemen know what a strawman is, but a strawman is an argument a lawyer sets up so he can knock it down. Usually it doesn't prove a darn thing. In this case Mr. Claxton's lawyer came to you and said he had 17 reasonable doubts. I submit what he had was a little army of strawmen. Let's take a few of them. The rest I will leave to you.

First we are back to the fingerprints again. You remember the photos showed the man in the white hat never touched anything, let alone the tellers' counters.

Should the FBI have dusted in the air? What should they have done?

Then license plate B13BUY, first of all an impossible license plate. Second of all, there is no context that Claxton provided the getaway car in the first place in this robbery he provided the getaway car in the robbery nine days later or ten days later.

Next strawman. Claxton didn't run when he drove up to G and J Auto Repair. Likely explanation. Two FBI agents and a New York City Police Department detective.

Next strawman. Claxton gave his real name, Walton Claxton. When? When he was first asked his name by the FBI agent at G & J Auto Repair? No, hours later at the 75th Precinct talking to Detective Reehil.

Next, his picture isn't in the Manufacturers Bank getting his change because he had already made the change and was outside perhaps, maybe counting his money, counting that change. But remember his testimony. He went in there with 60 singles and got three $20 bills. How long does it take to count three $20 bills?

Next, Exhibit 16, the man in the white hat in the Manufacturers Bank, it is clearly not me. What does that prove? That there was another white hat in New York City? He drove the getawway car in in that robbery. He wasn't

the man in the white hat on August 3rd.

Last strawman. That on August 30th he made enough in cab fares to pay George Farrar $90 rental. I submit, ladies and gentlemen, there were other ways to make money that day in Manhattan. You can rob a bank on 86th Street and get a lot more than $90.

Just one more. Why does a big time bank robber drive a taxicab at all? Why does he have to do that? Maybe one of the answers is, he is driving the cab and renting the cab because he is planning to use it as a getaway car, because that's exactly what happened.

Now, the government submits the proof on the Chemical Bank robbery on August 30th before you is overwhelming: The proof on the other bank robberies that you heard about is overwhelming too. The defendants say those other bank robberies are wholly extraneous, they don't have anything to do with this bank robbery. But you will remember the common mode of operation, that at least on this job and the Manufacturers job they were almost identical and part of the same scheme.

They say disregard the other bank robberies. The government just asks that you listen to the judge when he tells you what weight you are to give to the other bank robberies. Thank you.

CHARGE OF THE COURT

(MacMahon, J.)

THE COURT: I would like to begin this charge by apologizing for the time you have had to spend cooling your heels while we have been working with some law points out here that are our concern and not yours, and to thank you for your prompt attendance and very patient attention that you have paid to the evidence in this case.

All of us in this courtroom have different functions. It is my function and duty at this point in the trial to instruct you on the law that applies to this case and it is your duty to accept the law as I give it to you, whether or not you agree with it and to apply that law to the facts as you find them.

Now you are the exclusive judges of the facts. You and you alone decide what value, what weight, and effect you will give to the evidence. You decide whether or not to believe a witness, and ultimately, of course, you decide whether each of these defendants is guilty or not guilty of the charges made against him in this indictment now on trial.

Now, you are not to conclude from any rulings that I have made throughout this trial or any questions that I have asked that I have any opinion one way or the

other as to the guilt or non-guilt of either of these defendants. That decision is exclusively up to you.

Now, how do you go about finding the facts? Finding the facts is merely a process by which you, the jury, consider the exhibits which have been received in evidence and the testimony of all of the witnesses, both on direct and on cross-examination, sift out what you believe, weigh it in the scale of your reasoning powers and common sense, and draw such conclusions as you believe the evidence supports and justifies and decide just where the truth lies in this case.

Now, in this connection all evidence is of two general types, direct evidence and circumstantial evidence. Evidence is direct when the facts are shown by exhibits which are admitted into evidence or when the facts are sworn to by witnesses who have actual knowledge of them from something they have learned from the exercise of one of their five fundamental senses. In other words, something that the witness has seen, something that he has heard, something that he has touched, something that he smelled, something that he tasted.

Circumstantial evidence simply means the drawing of a logical inference or conclusion from other connected facts that are established by direct evidence. The classic

example of circumstantial evidence of Daniel Dafoe's story of Robinson Crusoe's conclusion that there was another man on the island from the direct evidence of the fact that he saw a footprint and he knew that it was not his own. And so he came to the only logical conclusion that he could draw from the presence of another human footprint, that there was another man, at least one other man, on the island.

Now, not all circumstantial evidence is that compelling, but it is the same process. It is a process which we use almost hourly in our daily lives. We draw logical conclusions from other connected facts and the process is not different here.

Now, no greater degree of certainty is required when evidence is circumstantial than when it is direct, for in either case you must be convinced beyond a reasonable doubt before you can find any defendant guilty.

Now, it is your memory of the evidence that controls. It is not necessarily the way the lawyers remember it nor is it necessarily the way the lawyers remember it nor is it necessarily the way I remember it and I do not intend to review the evidence in this case in any detail at all. Here and there I may touch on it. In doing so I am only touching on some of it. You are not to infer that the part I don't touch on is unimportant. It is simply that we have to be aware of the shortness of

life and that I only need to refer to it so as to help you and guide you in focusing on the issues of fact in light of the governing law.

Now, if your memory squares with the lawyer's memory, you may accept their version of the evidence. But to the extent that you have a different recollection of it you are bound by your oath to rely on your own memory. And that same rule applies to me. If your memory differs from mine, reject what I say and rely on your own memory.

When I say rely on your own memory I mean your collective memory. One of you can help simulate or refresh the other's recollection of the evidence, and resort to that process because at the moment the record of this trial is locked in the stenographer's notes and it takes time to dig out any particular testimony that you might like. But if after trying to exhaust each other memory you are unable to remember the evidence or disagree about what it says to the point where you want to hear it again, tell me what you want. Bear in mind you will have to listen to it both on direct and cross and redirect examination. Pinpoint what you want and send me a written note from your foreman and I will see that you are given what you want.

Now, except for the witness Graham the government called no other witnesses from the bank on the issue of

identify. You may, therefore, but you are not required to, infer from that fact that the government did not know of any other witness who could identify either defendant by direct testimony.

One of your most important functions is to decide which witnesses you will believe and this is so as to every witness, whether called by the government or by the defense. And this also applies to government agents and police officers. You are not to be influenced by the number of witnesses called or by the length of the trial. You are concerned not with the quantity but with the quality of the evidence.

The first test which you should apply in determining the trustworthiness of a witness is to measure what he says against your plain everyday common sense. You are not bound to believe unreasonable statements or to accept testimony that insults your intelligence just because the statements are made under oath in a public courtroom.

You saw the witnesses in this case. In deciding whether to believe a witness you should consider not only what he said but the way he said it and the way he behaved and his manner and demeanor on the witness stand. I saw you watching each of these witnesses with particular care as they were testifying. Obviously you were sizing them up.

How did the witness impress you? Was the witness being frank? Was the witness evasive? Were the witness' answers to straight questions straight answers or were they evasive? Was the witness just parroting answers? Did the witness have any motive to testify falsely? Is the witness interested in any way in the outcome of this case? How strong or weak was his memory on important events? Can you rely on him? Can you trust him? Did he show any bias or prejudice toward either side?

You ought to consider particularly in this case the witness' opportunity to know the facts about which the witness testified and the probability or improbability of what he or she said in light of the totality of the circumstances shown in the evidence.

Now, how does the witness' testimony add up when you consider it along with all the other evidence and the physical facts and the documentary evidence? In short, does his story check out? Are there any inconsistencies in the witness' testimony? And if so, how important are they? Has the witness made some inconsistent statement on an earlier occasion? If so, how important are those inconsistencies? In that connection you should consider not only what he said on the earlier occasion but also what he omitted to say or failed to say.

Now, if you find that any witness has deliberately and wilfully lied with respect to any material fact in his or her testimony offered at this trial, you may follow either one of two courses. You may accept as much of a witness' testimony as you believe, or you may reject, if you wish, his or her entire testimony.

Now, before discussing the crimes charged here I want to remind you that an indictment is a mere accusation. It is not evidence of the truth of the charge made and you cannot draw any inference of guilt from the mere fact that a defendant has been indicted. An indictment simply means that the defendant has been accused, and each defendant here has denied the charges made against him by his plea of not guilty.

No defendant has any burden of proof to sustain in this case. Neither is under any obligation to produce any witnesses at all. He is presumed to be innocent, and this presumption of innocence continues throughout the trial and during your deliberations. This presumption of innocence is overcome when, and only when, the government has established the guilt of the defendant whom you are considering beyond a reasonable doubt.

Now, what do I mean by beyond a reasonable doubt? As the phrase implies, a reasonable doubt is a doubt that

is based upon reason, a reason which appears in the evidence or in the lack of evidence. It is not some vague, speculative, imaginary doubt, nor a doubt based upon guesswork, emotion, sympathy or prejudice, or upon what some juror might regard as an unpleasant duty. The governme is not required to prove the guilt of a defendant beyond every possible doubt, nor to an absolute or mathematical certainty, because such measure of proof is usually impossible in human affairs.

You should review all of the evidence as you remember it. Sift out what you believe. Discuss it, analyze it. Compare your view of the evidence with that of your fellow jurors. If that process produces a solemn belief or conviction in your mind such as you would be willing to act upon without hesitation if this were an important matter of your own, then you may say that you have been convinced beyond a reasonable doubt.

On the other hand, if after going through that process your mind is wavering or so uncertain that you would hesitate before acting if this were an important matter of your own, then you have not been convinced beyond a reasonable doubt and your verdict must be not guilty.

Now, the indictment in this case contains three counts. Each count charges a separate crime. Each count

must be considered separately. The indictment names two defendants. Both are on trial before you. In determining guilt or non-guilt you must bear in mind that guilt is personal. The guilt or non-guilt of each defendant must be determined separately with respect to him solely on the evidence presented against him or on the lack of evidence.

Now, Count 1 of the indictment charges, and the counts are brief and I will read them to you and I will give your foreman a copy of the indictment to take with you into the jury room to guide your deliberations.

Count 1 charges "On or about the 30th day of August, 1976, in the Southern District of New York, Walton Claxton and Kim Cranshaw, the defendants, unlawfully, wilfully and knowingly, by force, violence and intimidation, did take from the person and presence of another money and property in the approximate amount of $19,948 which belonged to and was in the care, custody, control, management and possession of the Chemical Bank, 453 East 86th Street, New York, New York, a bank the deposits of which were then and then insured by the Federal Deposit Insurance Corporation."

I might begin this instruction in discussion of this count by telling you that as I understand it there is

no dispute here at all that some men committed the crime charged in Count 1. Nevertheless, we have to go through that crime. But bear in mind that the essential question here is not so much whether this bank robbery occurred, whether somebody did it, but who did it. In short, are these defendants the robbers or is this a case of misidentification? That's what this case comes down to.

Now, Count 1 is based on a federal law which provides, "Whoever by force and vilence or by intimidation takes or attempts to take from the person or presence of another any property or money or any other thing of value belonging to or in the care, custody and control, management or possession of a bank is guilty of a crime."

In order to establish the charge contained in Count 1 the government must prove to your satisfaction beyond a reasonable doubt each of the followingthree elements:

1, that the deposits of the Chemical Bank at 453 East 86th Street, New York, New York, were insured by the Federal Deposit Insurance Corporation as of August 30, 1976. There is no dispute in the evidence that these deposits were so insured by the Federal Deposit Insurance Corporation.

2, that the defendant knowingly, wilfully and

intentionally took money or aided and abetted others who took money which belonged to or was in the care, custody, control, management and possession of the bank from the person or presence of a bank employee or other persons.

3, that the money was taken by force, violence or intimation from the person or presence of another." In other words, someone other than the robber. Here a bank employee and the customers in the bank.

There is no dispute in the evidence that on or about August 30, 1976, three men entered the bank, held up the bank employees and took money from the possession of the bank.

The key question, therefore, is the identity of the robbers.

To take by intimidation means to take money by putting another person in fear of bodily harm. Such fear must arise from something said or done by the alleged robber or robbers rather than from mere timidity on the part of the victim. It is not necessary, however, that the victim become terrified, panic stricken, or hysterical or show any fright. If you find that an ordinary person would have been put in fear of bodily harm from anything that the alleged robber or robbers said or did under all of the circumstances, then you should find that there

was a taking by intimidation. However, actual fear need not be proved. Fear may be inferred from statements made and acts done by the person allegedly committing the offense and from all of the surrounding circumstances shown by the evidence in the case.

You will note that the indictment charges that the defendants acted unlawfully, wilfully and knowingly. The term unlawfully simply means that a defendant's conduct is prohibited by law. It does not mean that he must know that his conduct is prohibited by law.

The term wilfully simply means that the defendant acted of his own free will, that he was not forced or coerced; that he acted voluntarily, that he knew what he was doing, and that he acted intentionally and on purpose.

The term knowingly simply means that the defendant must be aware of what he is doing and that he acts freely and voluntarily, deliberately or on purpose, and not because of some mistake, accident, carelessness or other innocent reason.

Now, the government claims that the defendant Claxton participated in another bank robbery and that the defendant Cranshaw committed three other bank robberies. It is for you to decide whether the evidence shows such

participation by these defendants in other bank robberies. If you find that the defendant whom you are considering did commit one or more other bank robberies you must not jump to the conclusion that he therefore committed the bank robbery charged here. Obviously, the mere fact that and accused has committed some other crime is not proof that he committed the crime charged here.

Nor are you to conclude that because the accused committed other bank robberies he is a person of such bad character or of such bad character traits that he likely committed the bank robbery charged here. You may, however, consider whether those other bank robberies were so distinctively similar in the method, manner, pattern, timing, number of robberies, type of disguises and style of operation and execution as to indicate that those robbers and the robbers of the Chemical Bank were the same people or identical.

You may also consider such evidence on the question of whether the defendants knowingly joined together in a common and continuing plan or scheme or venture to rob banks.

You may also consider such evidence on the issues of motive, opportunity, intent, knowledge and the absence of mistake or accident.

There was testimony by Farrar that the defendant Claxton rented a gypsy cab from him under the name of Herbert Clifton and there was other testimony that later Claxton first gave that same name and then his true name to the agents of the FBI. There was also evidence that Claxton, when questioned by agents about involvement in a robbery of Manufacturers Hanovers Trust Company in Brooklyn, gave statements to the agents tending to show that he was compelled at gun point to drive a getaway car and that his presence at the bank was as a customer engaged in innocent business.

Now, it is for you to decide whether Claxton's statements were true or false and whether the name he gave was true or false.

If you find that Claxton knowingly and intentionally used a false name or gave a false explanation of his presence at the bank to conceal a connection with the Brooklyn bank robbery or to mislead, obstruct or frustrate the police or the FBI in their investigation of that or other bank robberies and that the Brooklyn bank robbery was so similar to the robbery of the Chemical Bank as to indicate that both were the work of the same men and committed by the same robbers, or were so similar in pattern as to show that both robberies were part of a common, joint plan by

Claxton and others to rob banks, then you may, but need not, consider such use of a false name or the giving of such false explanation as circumstantial evidence and may infer that Claxton had a consciousness of guilt or criminal intent concerning the robbery of the Chemical Bank.

Now, Count 2 of the indictment charges that "On or about the 30th day of August, 1976, in the Southern District of New York, Walton Claxton and Kim Cranshaw, the defendants, unlawfully, wilfully and knowingly did assault and put in jeopardy the lives of various persons by the use of a dangerous weapon, to wit, a firearm while committing offense described in Count 1 of this indictment."

Now, Count 2 is based on a federal law which makes it a separate crime to commit a bank robbery, as charged in Count 1, if in the commission of the robbery the accused assaults any person or puts in jeopardy the life of any person by the use of a dangerous weapon or device.

Thus if you find beyond a reasonable doubt from the evidence that the defendant whom you are considering did commit or aided and abetted another in the commission of the crime of bank robbery charged in Count 1, then you must determine whether the evidence establishes that the defendant assaulted any person or if the lives of any persons in the bank were put in jeopardy by means of a dangerous weapon

as charged in Count 2.

Now, assault means any intentional attempt or threat to inflict injury upon the person of another when coupled with an apparent present ability to do so, or any intentional display of force which would reasonably arouse or instill fear of immediate bodily harm in an ordinary man under the same circumstances. Thus an assault may be committed without actually touching or striking or doing bodily harm to the person of another.

As to the question of apparent present ability to inflict harm, it is not necessary that what appears to be a weapon actually have the capacity to kill or injure. It is sufficient that an ordinary person under the same circumstances would reasonably believe that a weapon or what appeared to be a weapon had a capacity to kill or injure.

For example, the flourishing or brandishing or pointing or waving of a pistol or gun at another person for the purpose of putting that other person in fear is an assault.

Even if you find no assault, Count 2 may still be established if you find that the lives of one or more people were put in jeopardy by the use of a dangerous weapon. A dangerous weapon is a weapon which either in its

very nature or by reason of the use made of it is capable, when used against another, of causing serious bodily injury or even death. To put in jeopardy the lives of bank employees means to expose them to danger of death by use of a dangerous weapon.

The question is not whether these people were made afraid but rather whether under all of the objective circumstances they were in a state of danger. Jeopardy means danger, not fear.

You are not concerned, therefore, with the subjective belief or feelings of the victim as you would be in Count 1, but with the circumstances showing an objective actual state of danger.

In this case before you can find that the life of a bank employee or anyone else in the bank was put in a state of danger, you must find that the defendant threatened persons in the bank with a loaded gun. But there need not be direct proof that the gun was loaded, and there is no such direct proof in this case.

However, if a robber threatens others by showing, pointing, brandishing, flourishing or waving a gun for the purpose of forcing or frightening them into obeying his commands, you may conclude that the gun was loaded and capable of inflicting deadly injury.

Now, Count 3 charges that on or about the 30th day of August, 1976, in the Southern District of New York, Walton Claxton and Kim Cranshaw, the defendants, did use a firearm to commit a felony and did carry a firearm unlawfully during the commission of a felony for which they may be prosecuted in a court of the United States, the offenses charged in Counts 1 and 2 of this indictment.

Count 3 is based on a federal law which provides that "Whoever uses a firearm to commit any felony for which he may be prosecuted in a court of the United States is guilty of a crime."

The crimes charged here may all be prosecuted in a court of the United States and all of them are felonies. Thus if you find that the government has proved to your satisfaction beyond a reasonable doubt that the defendant whom you are considering did commit the crime charged in Count 1 or 2, or both counts, then before you can convict him on Count 3 the government must also prove to your satisfaction beyond a reasonable doubt each of the following additional elements.

1, that the defendant carried a firearm with criminal intent; and 2, that he did so during the commission of the crime charged in Count 1, Count 2 or both counts.

In this regard a firearm is any weapon capable of expelling a projectile or bullet by the action of an explosive. And carrying a firearm with criminal intent simply means that the defendant knew that he was carrying a firearm and did so deliberately during the commission of a crime.

In this connection you will recall my earl. earlier instructions on the subject of knowledge, wilfulness and intent and apply them here.

Now, in order to convict the defendant whom you are considering it is not necessary for the government to prove that the derendant personally did ever act constituting any of the crimes charges in Count 1 or Count 2 or Count 3. The law of the United States provides that whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal.

In other words, you may find the defendant guilty of any of the counts charged in this indictment if you find beyond a reasonable doubt that he knowingly aided and abetted another in the commission of the particular crime charged. In such circumstances the defendant would be just as guilty of the crime or crimes as if he committed them personally.

Now, before you can convict a defendant for aiding and abetting, however, you must find that the crime was committed by another and that the defendant consciously associated himself with the criminal venture with the intent that his conduct would aid in its success. You must be convinced beyond a reasonable doubt that he was doing something to forward the crime of the other person; that he was a conscious, knowing participant rather than a mere bystander or spectator; that he had some sort of stake in its success.

If you find that these factors were present beyond a reasonable doubt, then the defendant may be found and should be found to be an aider and abettor.

Thus if you find that only one of the defendants personally committed any or all of the acts or crimes charged in Counts 1 or 2 or 3 you may nevertheless convict the other defendant also if you find that he aided or abetted the commission of that crime or crimes. For example, you will notice that Count 3 charges both Claxton and Cranshaw with using a firearm to commit a bank robbery. If you should find that only one of them actually personally carried the firearm, you may convict the other on Count 3 even though he did not personally carry the firearm, if you find beyond a reasonable doubt that he aided or abetted the one who did carry a firearm.

Now, that same principle applies to Count 1 and to Count 2.

There is yet another basis upon which you may convict the defendant whom you are considering on any of the counts charged in this indictment. When several people enter into an agreement to commit a crime, they form a joint or common criminal venture or plan. They enter into a partnership in crime. And once a defendant knowingly joins such a joint criminal venture or plan, he is responsible for the acts of every other member or partner in the joint criminal venture or plan, provided those acts were foreseeable and provided further that they were committed after he joined the common plan and in furtherance of the purposes of the joint criminal plan.

Now, the key question for you, as I have said throughout this case, is whether the defendant whom you are considering was in fact one of the bank robbers at the Chemical Bank on August 30th.

Now, the witness Velma Graham testified that she gave a description of the robbers to the FBI shortly after the robbery was committed; that on September 10th she was shown a spread of photographs and when asked whether she could identify any one of them as the robbers, she

selected a picture of Claxton, that on September 30th, in a similar process, she selected a photograph of Cranshaw and of another person, and in court she said that Cranshaw and Claxton both looked like the men who robbed the bank.

So we have here eyewitness identification. You should consider that testimony, but it does not relieve you of your responsibility and duty to consider the witness' testimony carefully and to reject the identification if you find that it is not reliable. The reliability of an identification by an eyewitness obviously depends upon all of the surrounding circumstances. You should therefore, look into the relationship of the witness and the person or persons she has observed. For example, did they know that a crime was taking place? Was the attention of the witness at the time of her observation focused on the robber or robbers, or was the witness preoccupied, hysterical, or distracted?

You should also consider the opportunity of the witness to observe the robbers during and after the incident in determining the reliability of the witness' identification. You should, therefore, consider all of the circumstances

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shown in the evidence which bear on the ability, opportunity and motivation of the witness to make a careful observation and to form and retain a definite image of the robbers in her mind. You should thus consider such factors as the condition of the witness' eyesight, her range of vision, her observation point, whether or not her view was clear or obstructed, her age, her mental condition, her emotional state at the time of her observations. You should also consider the length of time that the witness was able to observe the robbers, the lighting conditions, the distance between the witness and the robbers, any distinctive physical characteristics, facial expressions or mannerisms of the robbers and their attire and general appearance.

Now the circumstances of the photographic identification procedures should also be considered by you in determining the reliability of the witness' identification of the defendant as one of the robbers. You should consider all the circumstances surrounding these pre-trial identification procedures in determining the reliability of the witnesses in-court identification of the defendants as the robbers.

Thus as to the photographic identification procedures some of the factors which you should consider are: The lapse

of time between the witness' initial observation of the robbers at the time and scene of the crime and her viewing of the photographs, the duration of the viewing session, the witness' physical and emotional state at those times, the identity and number of persons attending the viewing sessions with the witness, the number of photographs shown to the witness and whether the defendant's picture was among the photographic spread, whether the witness was able to identify the defendants as the robbers at the times she viewed the pictures, and if so whether her identifications were quick, certain and positive or hesitant, uncertain and unsure.

You should also consider whether any description that the witness gave before viewing any of the photographs matched the actual appearance of the defendants.

Now, the circumstances of the witness' in-court identification of the defendants as the robbers may also be considered by you in determining the reliability of the witness. Here are some of the factors you should consider: The lapse of time about three months between the initial observation and this trial and her intervening observations of them from the photographs; the witness' observation of the defendants sitting at counsel table, the testimony of the witness on direct and cross-examination as to the

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basis for her identification; whether the witness was able to identify the defendants on a previous occasion, whether the witness' identifications in court were quick, certain and positive or hesitant, uncertain and unsure.

You should, therefore, decide whether the witness is able to identify the defendants here as men who looked like the robbers because of the image she formed from her independent observation of the robbers at the scene of the crime or whether the identification procedures used either before or at the time the witness viewed the photographs or before she viewed them upon this trial were so suggestive as to give rise to a very substantial risk or likelihood of mistaken identification.

Now, in this connection there was a confession. And under our constitution a defendant cannot be compelled to be a witness against himself. Before any statements or admissions which were made by the defendant after he was taken into custody can be used against him on this trial you must therefore find that the defendant made such statements or admissions knowingly, intentionally, freely and voluntarily after full warning of his constitutional right to remain silent.

In determining whether any statement or admission was made by the defendant, and if so whether it was knowingly,

intentionally, freely and voluntarily made, you should consider the age, sex, the station in life, the education, the experience, the occupation, the background, the physical and mental condition of the defendant, and of his treatment while he was in custody or under interrogation as shown by the evidence in the case.

You should also consider all other circumstances in evidence surrounding the making of the statement or admission including the length of the interrogation, the duration of his custody, the number of agents present, their ages relative to his, the place or places where the interrogation took place, whether other people were present and whether any promises or representations by the agents were made to the defendant to induce him to make a statement.

When an individual is taken from familar surroundings and thrust into the unfamiliar atmosphere of police custody and run through interrogation procedures, there is a possibility that his free will will be overborne and that he will feel compelled to speak or to provide other evidence against himself. Therefore, in order to make certain that any statement or admission obtained from him while he is in custody is truly the product of his own free choice and decision, the law requires that the agents warn

him of his rights before they ask him any questions. I am sure now every child has heard of what we call the Miranda case. Thus he must be warned before interrogation by the agent that he has a right to remain silent, that anything he says may be used against him in a court of law, that he has a right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him free of charge. If those warnings are given and the defendant is not otherwise compelled to give testimony or evidence against himself and he knowingly and intentionally waives his right to remain silent and consents to answer questions after being fully informed of his rights and voluntarily answers questions, makes statements or furnishes other evidence, such evidence may be used against him upon a trial.

On the other hand, if the agents fail to warn the defendant of his rights or otherwise overbore his own free will, any statement or admission made under such circumstances while the defendant was in custody may not be used against him.

You should consider all of the evidence bearing on the circumstances surrounding the arrest and the interrogation, including the places where it occurred, the number of agents present, the length of the interrogation, the duration

of the custody and the defendant's opportunity to talk either personally or by telephone to his friends, to his relatives, to his parents, to his wife or to his lawyer.

You should also consider the testimony of Police Officer Lyons and Special Agent Wichner to the effect that they did give the defendant full warning of his constitutional rights immediately upon his arrest and before they asked him any questions whatever, and that they did so not just once but on several other occasions thereafter.

After considering all of the evidence, if you decide that any statement or admission made by the defendant was not the product of his own free will and an intelligent free choice on his part, after being informed of all of his rights, but instead was the product of compulsion or failure of the agents to warn him of his constitutional rights, you must disregard such evidence entirely.

On the other hand, if the evidence shows to your satisfaction beyond a reasonable doubt that any such statement or admission was in fact voluntarily and intelligently made by the defendant after full warning of his constitutional rights and the result of a free and intelligent choice on his part, you may consider such evidence in the case against this defendant. Should you be convinced beyond a reasonable

doubt that the confession was voluntarily made, you should give it such weight as you feel it deserves under all of the circumstances.

Now, if you find that Cranshaw made statements and that they should be considered under all of the circumstances, then you may consider them but only as to the case charged here against Cranshaw and not as to the charge against Claxton. Similarly, if you find that Claxton made statements and you determine that they should be considered under all of the circumstances then you may consider them but only as to the case against Claxton and not as to the case against Cranshaw.

You should consider each of the counts and each defendant separately. You should render a verdict of guilty as to the defendant whom you are considering on the count which you are considering if you find that the government has proved beyond a reasonable doubt any of the following:

1, each of the elements of the crime charged in that count as I have given them to you; or

2, that the defendant aided or abetted others in the commission of the crime charged in that count; or

3, that the defendant was a partner in a joint criminal plan or venture and that any other member or members

of the same joint criminal plan or venture committed the crime charged in furtherance of the purposes of the joint criminal venture and that the act was foreseeable and committed after he joined in the common plan.

If you find any of these three things then you should render a verdict of guilty on that count as to that defendant.

On the other hand, if you find as to the count and as to the defendant whom you are considering that the government has proved none of these three things beyond a reasonable doubt, then you must find that defendant not guilty on that count.

You are instructed that the question of possible punishment of a defendant in the event of a conviction is no concern of yours and it should not in any sense enter into or influence your deliberations. The duty of imposing sentence in the event of a conviction rests exclusively upon the court. Your function is to weigh the evidence in the case and determine the guilt or non-guilty of the defendant solely upon the basis of that evidence. When you retire to the jury room treat one another with consideration and respect, as I know you will. If differences of opinion arise your discussions should be dignified, calm, intelligent. Your verdict must be based on the evidence

and the law. The evidence which was presented in this case as you remember it and the law as I have given it to you in this charge. You are each entitled to your own opinion. No juror should acquiesce in a verdict against his individual judgment. Nevertheless, I would point out that no one should enter a jury room with such pride of opinion that no matter how persuasive or convincing or intelligent the argument of another juror or jurors, he would refuse to change his mind.

Discussion and deliberation are part of our democratic jury process, and your deliberations should be approached in that spirit. Talk out your differences. Each of you should in effect decide the case for himself or herself after thoroughly reviewing the evidence and frankly discussing it with your fellow jurors with an open mind and with a desire to reach a verdict.

If you do that you will be acting in the true democratic process of the American jury system.

There are 12 of you on this jury. The alternates will be exused before you retire for your deliberations. Any verdict must be the unanimous verdict of all of you as to the defendant whom you are considering and as to the court which you are considering, and it must represent the honest conclusion of each of you.

I submit the case to you with every confidence that you will fully measure up to the oath which you took as members of the jury to decide the issues submitted to you fairly and impartially, without fear, without favor.

Now, members of the jury if you find that the government has failed to establish the guilt of the defendant whom you are considering beyond a reasonable doubt, you should find that defendant not guilty. If that defendant has not violated the law, you should not hesitate for any reason to render a verdict of not guilty as to him.

But on the other hand, if you find that the government has established the guilt of the defendant whom you are considering beyond a reasonable doubt you should not hesitate because of sympathy or any other reason to render a verdict of guilty.

Your foreman will return an oral verdict in open court of guilty or not guilty as to each of the three counts.

Are there any exceptions, gentlemen? If so, I will hear you up here at the side bar.

MR. DOYLE: Yes, your Honor.

THE COURT: I am going to hand you a copy of the indictment, Mr. Foreman. Don't get confused by the numbers appearing at the bottom of it. You will note there is nothing in the indictment about common plan or venture or

the words aiding and abetting. What I told you in my instructions is included and covered by all of those numbers at the bottom of each count.

(At the side bar)

MR. DOYLE: I take exception to the inclusion of the joint venture charge on the ground there was no conspiracy count and that the government has opted for aiding and abetting in its theory of the case.

MR. CIAMPA: I join in that.

MR. DOYLE: In view of the possible confusion of the jury because of the evidence of a common scheme or plan, that even if they might conclude that Cranshaw was not present at Chemical Bank they might conclude he is guilty because of a common scheme or plan with other people at another bank, whether before or after. I think in order to clarify this point your Honor should charge the jury that it is the government's contention that he was the vaulted and if they don't find he was the vaulter beyond a reasonable doubt they must acquit him.

THE COURT: I note your exception and decline to change it.

Do you wish to be heard on that, Mr. Mazur?

MR. MAZUR: No, your Honor.

MR. CIAMPA: I join in that exception and I take

exception to your Honor's charge in dealing with so much of that portion dealing with the false exculpatory statements. I stated my ground previously.

THE COURT: I note your exception.

MR. MAZUR: I think the record should reflect it was the defendants who requested that the standard charge on defendants not taking the stand be omitted from the court's charge.

THE COURT: I think the law of the circuit is unless they affirmatively request it I should not give it and neither of them affirmatively requested it. I know Mr. Doyle in his wisdom never does. Mr. Ciampa hasn't appeared before me.

That's correct, neither of you affirmatively requested it?

MR. DOYLE: That's correct.

MR. CIAMPA: Yes.

MR.MAZUR: In the 924(c) count, your Honor charged basically the prong of that count with carrying a firearm with criminal intent. Actually the government's theory of the case was that, and in addition that the use of the firearm in the commission of the felony than the issue of criminal intent because there was no evidence adduced as to whether or not there was a license.

THE COURT: I am not going to change it now. It can't be done now with any clarity.

(In open court)

(Alternate jurors excused)

(Marshal sworn)

(Jury commences deliberations at 4:15 P.M.)

* * *

RBM:bj
11-380

GOVERNMENT'S BRIEF AT TRIAL CONCERNING THE ADMISSIBILITY OF SIMILAR ACTS (pp. 236a-245a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -x

UNITED STATES DISTRICT COURT :

- v - : 76 Cr. 967 (LPD)

WALTON CLAXTON and :
KIM CRANSHAW, :

Defendants. :

- - - - - - - - - - - - - - - - - - - -x

GOVERNMENT'S MEMORANDUM OF LAW
ON THE ADMISSIBILITY OF EVIDENCE
OF SIMILAR CRIMINAL ACTS

Preliminary Statement

This memorandum of law is submitted on behalf of the Government in support of its position that evidence of participation in certain other bank robberies by defendants Walton Claxton and Kim Cranshaw is admissible in the present bank robbery trial on the issues of their opportunity, intent, preparation, plan and identities, and additionally, with respect to Cranshaw, on the issue of motive.

The indictment in this case charges that defendants engaged in an armed robbery of the Chemical Bank, 453 East 86th Street, New York, New York, on August 30, 1976 (the "Chemical robbery"). The Government intends to offer

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proof at the trial that both defendants participated in an armed robbery at the Manufacturers Hanover Trust Company, 2084 Linden Boulevard, Brooklyn, New York, on September 8, 1976 (the "Manufacturers robbery"). It also seeks to prove that Cranshaw robbed the Prudential Savings Bank, 418 Myrtle Avenue, Brooklyn, New York, on July 29 and, again, on August 18, 1976 (the "Prudential robberies").

Argument

Rule 404(b) of the Federal Rules of Evidence provides:

> Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. (Emphasis added.)*

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* The Advisory Committee's Note to Rule 404(b) indicates that the list of issues on which similar act evidence is admissible is not exclusive and that ultimately the trial court's discretion must be exercised in light of Rule 403. As the Senate Judiciary Committee report noted:

> Although your committee sees no necessity in amending the rule itself, it anticipates that the use of the discretionary word "may" with respect to the admissibility of evidence of crimes, wrongs, or acts is not intended to confer any arbitrary discretion on the trial judge. Rather, it is anticipated that with respect to permissible uses for such evidence, the trial judge may exclude it only on the basis of those considerations set forth in Rule 403, i.e., prejudice, confusion or waste of time.

S. Rep. No. 93-1277, 93d Cong., 2d Sess. 24-25 (1974 (emphasis added).

PLA:bj
11-350

It is the settled law in this circuit that evidence of other crimes is admissible, if relevant, except when offered solely to prove criminal character or disposition. United States v. Johnson, 525 F.2d 999, 1006 (2d Cir. 1975); United States v. Campanile, 516 F.2d 283 (2d Cir. 1975); United States v. Gerry, 515 F.2d 130, 140-41 (1975); United States v. Papadakis, 510 F.2d 287, 294-95 (2d Cir.), cert. denied, 421 U.S. 950 (1975); United States v. Miller, 473 F.2d 1315 (2d Cir. 1973); United States v. Williams, 470 F.2d 915, 917 (2d Cir. 1972); United States v. Ravich, 421 F.2d 1196 (2d Cir. 1970); United States v. Johnson, 382 F.2d 280, 281 (2d Cir. 1970); United States v. Deaton, 381 F.2d 114 (2d Cir. 1967). See generally, 2 Weinstein's Evidence, ¶404-(08)-(09)(1975); II Wigmore on Evidence, §§ 300-03 (3d ed. 1940).

The Government is entitled to introduce such evidence in its direct case in order to meet its burden of establishing the essential elements of the offense charged. It need not wait until such elements are put in issue by the defendant. United States v. Johnson, supra, 382 F.2d at 281; United States v. Deaton, supra, 381 F.2d at 118 n.3; United States v. Byrd, 352 F.2d 570 (2d Cir. 1965).

In United States v. Campanile, 516 F.2d 288 (2d Cir. 1975), the trial court in a bank robbery trial permitted the Government to prove a prior break-in into an American Legion hall by the same defendants. The Second Circuit approved the admission of such evidence on the grounds the evidence showed that the break-in and the two bank robberies charged in the indictment were all part of a single criminal escapade. 516 F.2d at 292-93.

United States v. Miller, 478 F.2d 1315 (2d Cir. 1973), involved a bank robbery trial in which there was testimony and references in the prosecutor's summation to the appellant's participation with certain co-conspirator witnesses in a prior uncharged bank robbery trial. The Second Circuit found no error, stating:

> The uncharged bank robbery . . . could have been proven on the Government's direct case to show the organization and structure of a larger conspiracy. . . . and to show that appellant was not merely an innocent participant in the robbery for which he was on trial. United States v. Freedman, 445 F.2d 1220, 1224 (2d Cir. 1971); C. McCormick, Evidence § 190 at 451; 2 J. Wigmore, Evidence § 302 at 196-201, § 351 at 255-58 (3d ed. 1940).

478 F.2d at 1318.

In United States v. Ravich, 421 F.2d 1196 (2d Cir. 1970), still another bank robbery case, the Second Circuit

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11-350

approved the trial court's admission of evidence of the defendants' possession of large quantities of guns at the time of their arrests, more than one month after the charged bank robbery. The Court of Appeals stated that such possession was relevant in that the jury could infer that some of the guns had been possessed for a substantial period of time and thus conclude that the defendants possessed guns on the day of the robbery. 421 F.2d at 1203-05.

Finally, in United States v. Johnson, 382 F.2d 230 (2d Cir. 1967) (per curiam), the defendant had been charged with two counts of theft from an interstate shipment. This Court permitted the Government to prove a similar act on the issue of "intent". The similar act involved a third such theft which took place on the date of one of the charged acts and involved an accomplice. The other of the charged acts took place almost four months earlier. One of the charged acts apparently did not involve an accomplice. Notwithstanding the time span and the variation in mode of operation, the Court of Appeals stated:

> Here the proof of the [similar act] was of great probative value in showing intent in a pattern or scheme of systematically planned and practically identical criminal acts and in corroborating the identification of the appellant, which had been made by each of the victims of the separate counts. It also tended to corroborate [one of the victim's] testimony that the appellant intended to use physical abuse against him if he did not comply with the appellant's unlawful demand.

382 F.2d at 281-82.

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11-300

In the present case, it is not expected that either defendant will seriously dispute the fact that an armed robbery took place at the Chemical Bank on August 30. Nor is there likely to be any contest to the facts that a black man in a white hat controlled the entrance to the bank during the robbery, while a second black man, in dark clothing, vaulted the tellers' counter. The testimony of persons in the bank, coupled with bank surveillance photographs, will establish the above beyond cavil. The sole issues at trial are expected to be (a) whether Claxton was the man in the white hat, and (b) whether Cranshaw was the vaulter. The Government submits that its proffered similar act evidence would show that Claxton and Cranshaw had the opportunity and intent to commit the Chemical robbery, that they prepared and planned with others to do it, and that, indeed, they have been properly identified as the robbers.*

---

* Moreover, as to the July 29 Prudential robbery, Cranshaw stated that he committed that robbery because his mother needed the money. The Government submits that his mother's need for large sums of money just one month prior to the Chemical robbery would serve to establish a motive for that robbery as well. See United States v. Engenberg, 441 F.2d 441 (2d Cir.), cert. denied, 404 U.S. 944 (1971); United States v. Johnson, 525 F.2d 999, 1006 (2d Cir. 1975) (prosecution for bank robbery; evidence of debts incurred in prior narcotics dealings held admissible to prove motive to rob). It is hornbook law that proof of need for money is admissible to show motive for pecuniary crimes. II Wigmore on Evidence §392 (3ed. 1940). See United States v. Polansky, 418 F.2d 444 (2d Cir. 1969) (proof that defendant was in debt relevant to establish motive for seeking gratuities in bribery case); United States v. Caci, 401 F.2d 664, 670 (2d Cir. 1968), vacated per curium on other grounds sub nom. Giordano v. United States, 394 U.S. 310, cert. denied, 394 U.S. 917, 394 U.S. 930 (1969) (proof that defendant passed bad checks admissible to show he lacked funds and thus had a motive to steal).

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11-380

A. Claxton

As to Claxton, the proposed similar act proof concerns his participation in the Manufacturers robbery on September 8. The Government contends that he drove the getaway car, a gypsy cab, following that incident. The Government's proof would consist of the testimony of a Special Agent of the Federal Bureau of Investigation ("F.B.I.") who observed the removal of film from bank surveillance cameras immediately following that robbery; the bank surveillance photographs themselves;* the testimony of a New York City Housing Authority Police Officer who witnessed the getaway and recorded the license plate number of the gypsy cab; the testimony of the individual who rented that cab to Claxton; the testimony of a Special Agent of the F.B.I. who apprehended Claxton in that cab approximately five hours after the robbery; and the testimony of that same Special Agent and a detective of the New York City Police Department as to certain statements made by Claxton after his apprehension. The Government contends that such statements were false exculpatory ones.

It is submitted that the Government's direct proof that Claxton was the man in the white hat in the Chemical robbery -- Velma Graham's anticipated in-court

* The Government does not contend that Claxton is depicted in any of these photographs. Rather, his sole function, apparently, was to provide and drive the getaway car. The surveillance photographs will, however, establish that there was in fact an armed robbery at the Manufacturers Bank on the day in question and that Cranshaw was one of the men in the bank.

identifications plus bank surveillance photographs -- is strongly corroborated by the above similar-act proof establishing him as the driver of the getaway car in the Manufacturers robbery nine days later. The robbers' mode of operation in each case was strikingly similar: each involved four robbers, at least three of whom were armed and inside the bank, while the fourth drove a getaway car; Cranshaw and a man named Frank Lewis were in both robberies; Cranshaw vaulted the tellers' counter in each of the robberies. It is anticipated that Claxton will attempt to impeach Ms. Graham's in-court identification and will argue that the Chemical Bank surveillance photos are unclear. His defense will be, in essence, the man in the white hat who robbed the Chemical Bank with Cranshaw and Lewis only looked like me. Any such defense, however, would be seriously undermined by proof that he drove the getaway car in an armed bank robbery with Cranshaw and Lewis nine days later.

B. Cranshaw

As to Cranshaw, the similar act proof as to the Manufacturers robbery would consist of the above testimony concerning the film and the surveillance photographs. Those photographs, in the Government's view, clearly establish that Cranshaw was in that bank and, indeed, played the same role -- that of the vaulter -- that he had earlier played in the Chemical Bank robbery. In addition, the Government

would offer against Cranshaw his own post-arrest admissions concerning that robbery. As to the two Prudential robberies, the Government would offer surveillance photographs and Cranshaw's post-arrest admissions. The Government does not contend that Claxton was involved in either of those incidents.

The Government's direct proof showing that Cranshaw was the vaulter in the Chemical robbery -- an anticipated in-court identification by Ms. Graham plus certain bank surveillance photographs -- is corroborated by the evidence concerning his having played the same role in the Manufacturers robbery. Since Cranshaw has made post-arrest statements admitting his participation in the Chemical, Manufacturers and Prudential robberies, his only conceivable defense is that those statements were false, and, like Claxton, Cranshaw can be expected to attack the accuracy of Ms. Graham's identification and to contend that the surveillance photos are unclear. His defense necessarily also boils down to a look-alike argument. Proof of his participation, with Claxton and Lewis, in the Manufacturers robbery would strongly suggest that his statement as to the Chemical robbery was true, that Ms. Graham is not mistaken and that the Chemical surveillance photos in fact depict him. Proof of his commission of the Prudential robberies -- one of which also involved Frank Lewis -- would further buttress the Government's position.

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11-360

Conclusion

The Government's proof as to Claxton's and Cranshaw's participation in the Manufacturers robbery, and Cranshaw's participation in the two Prudential robberies, should be admitted at the trial herein as tending to establish defendants' identities, intents, opportunities, preparations and plans and Cranshaw's motive to commit the charged Chemical robbery.

Dated: New York, New York

November 24, 1976

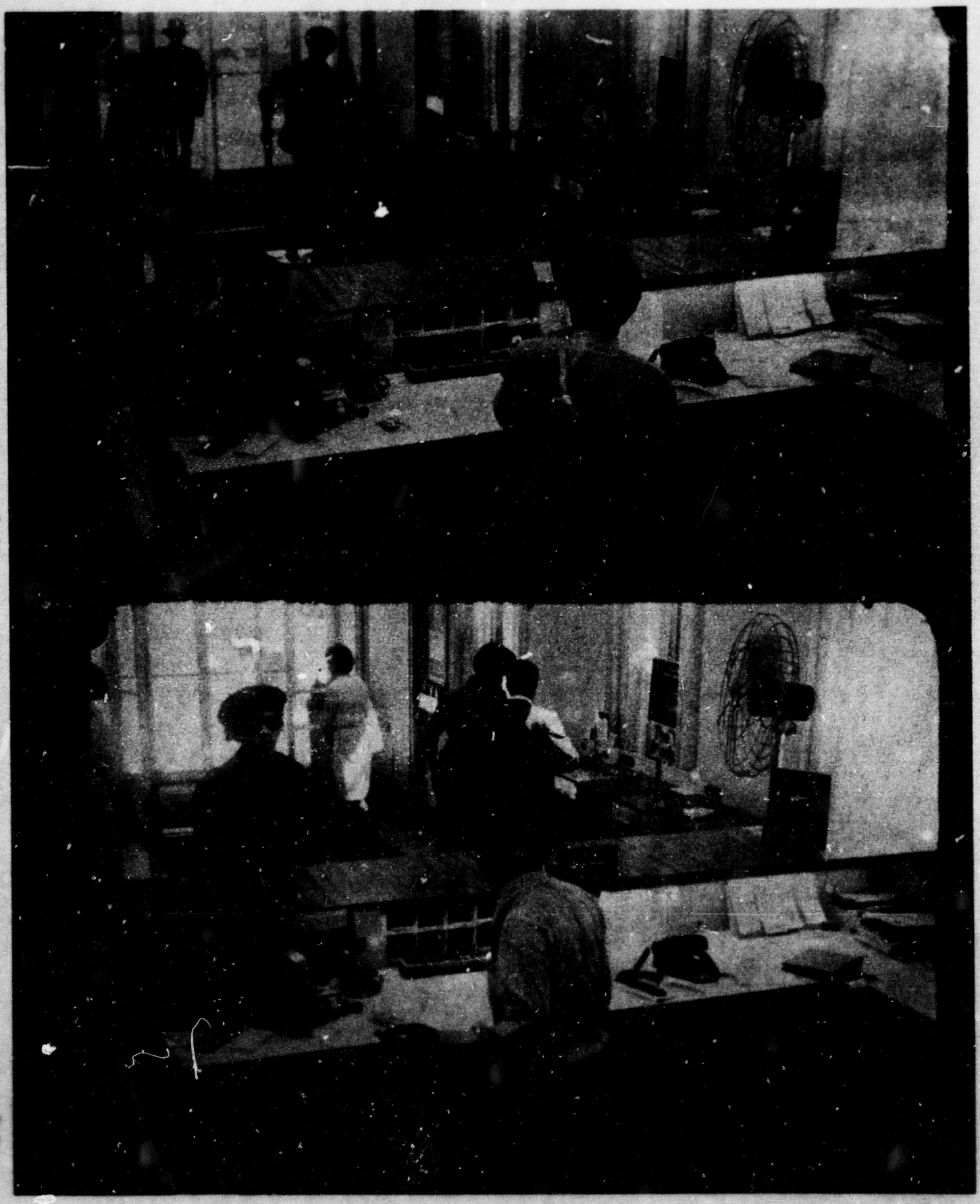
Respectfully submitted,

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

ROBERT B. MAZUR
Assistant United States Attorney

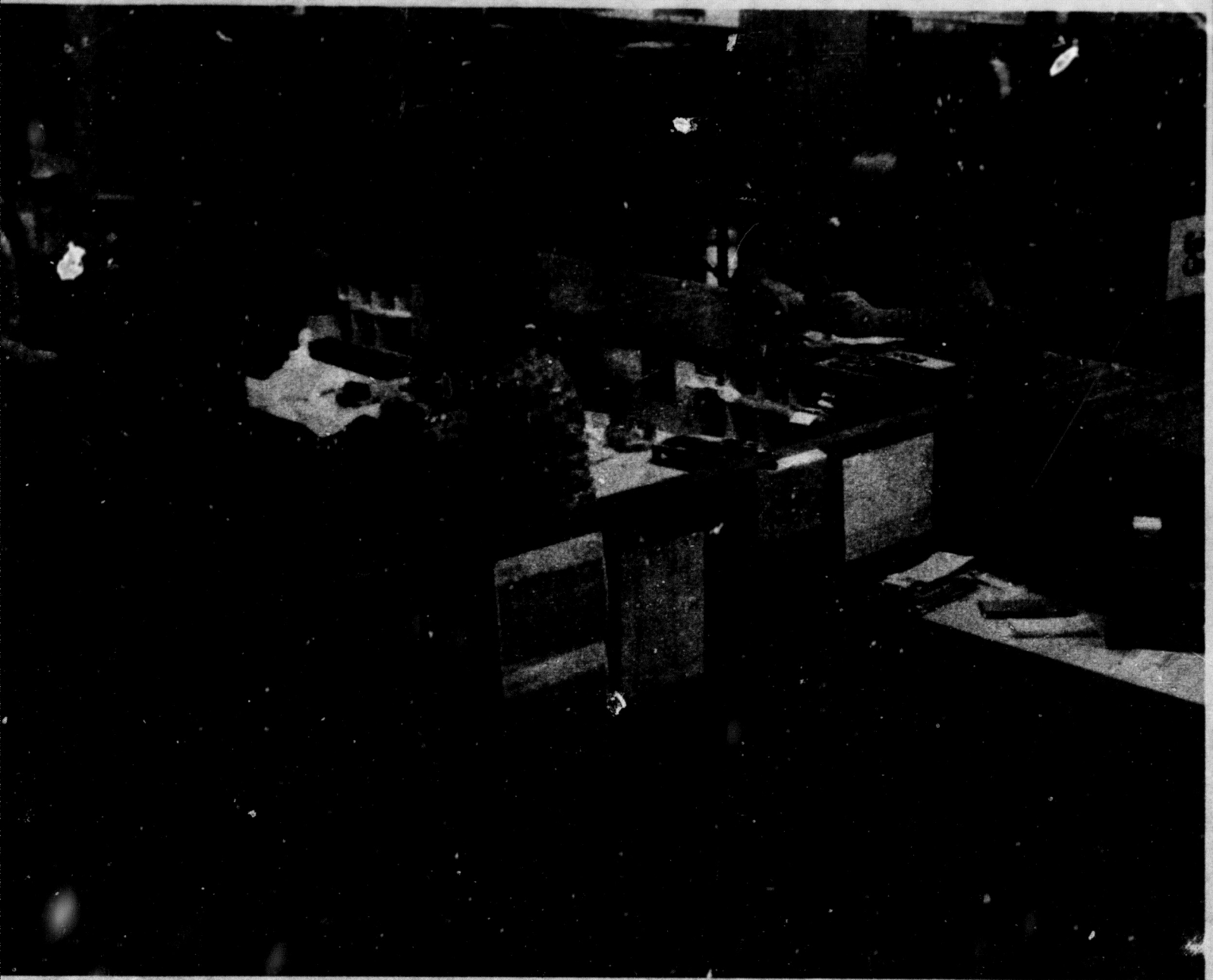
-Of Counsel-

GOVERNMENT'S EXHIBIT 4



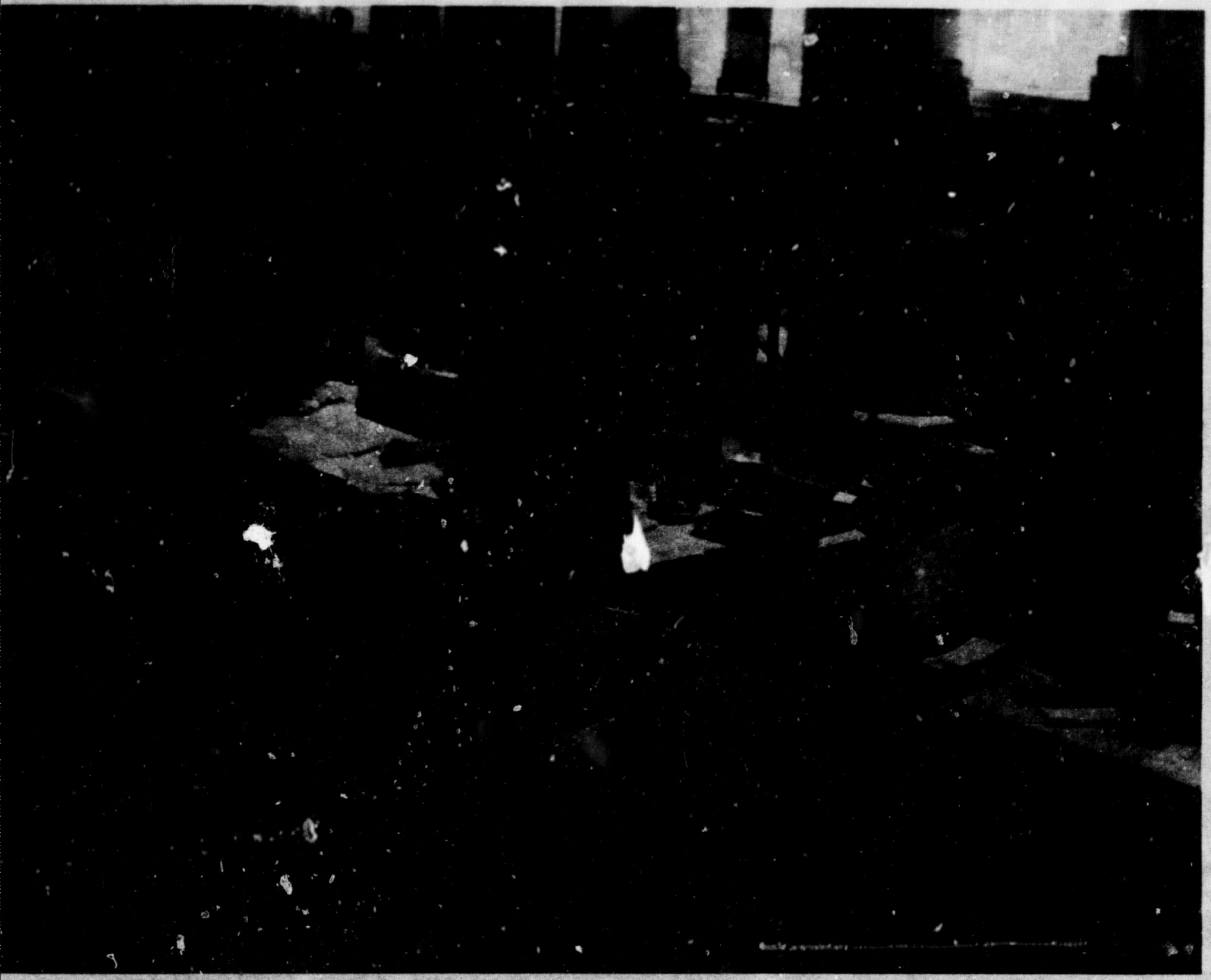
Government's Exhibit 4





GOVERNMENT'S EXHIBIT 4A

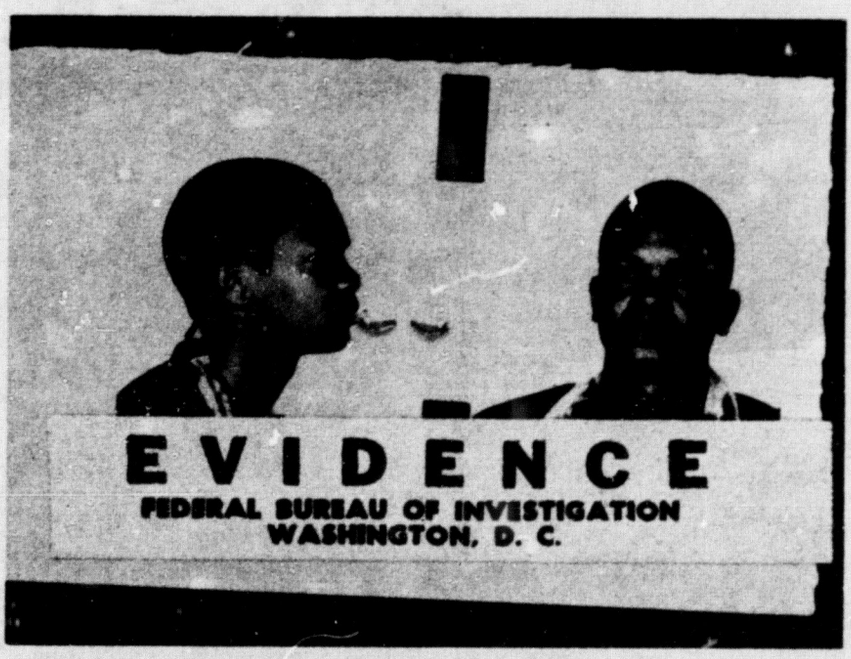
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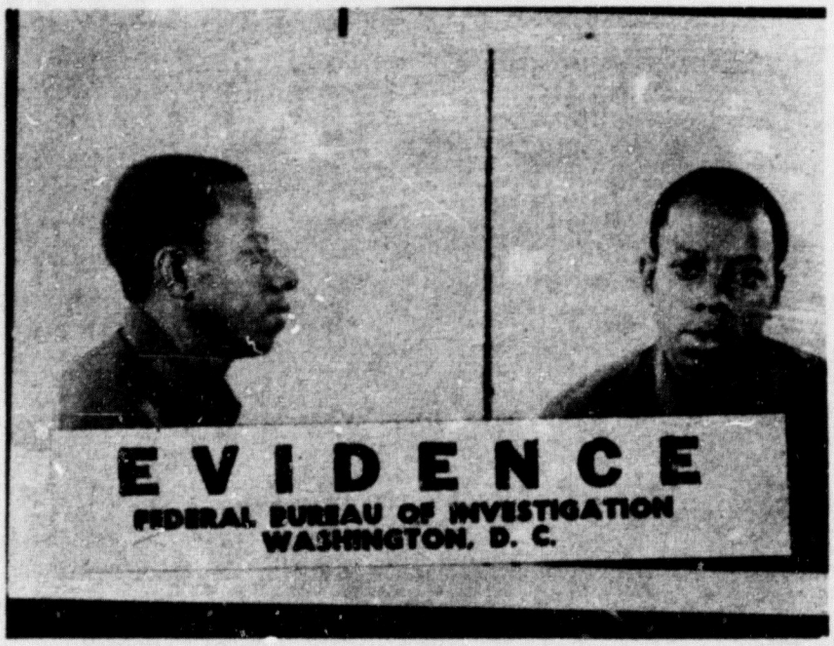
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249a

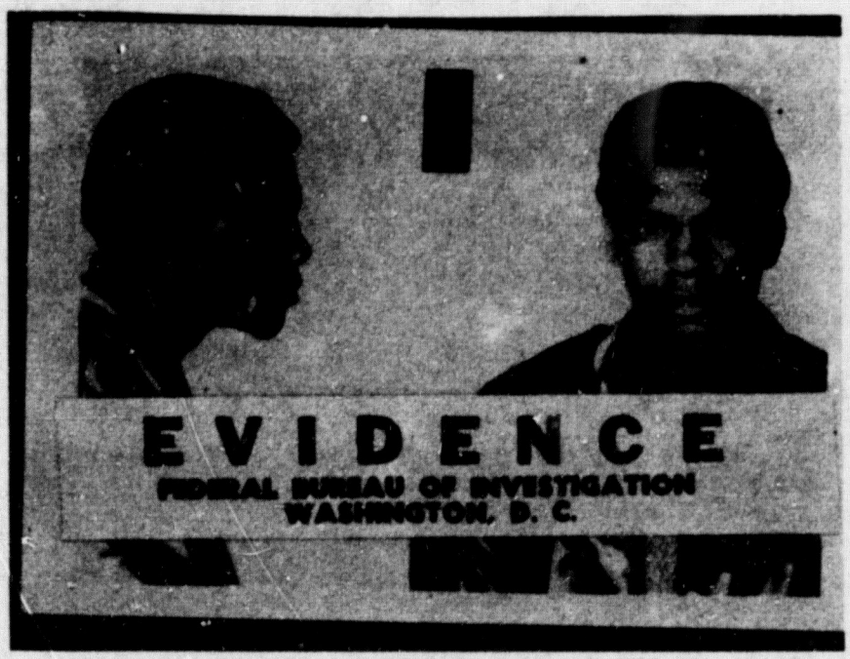
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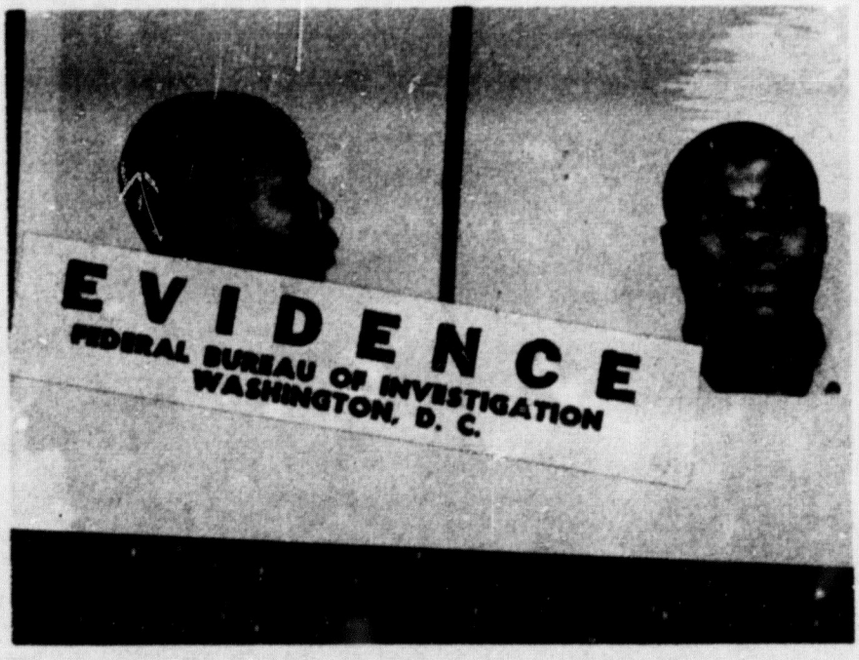
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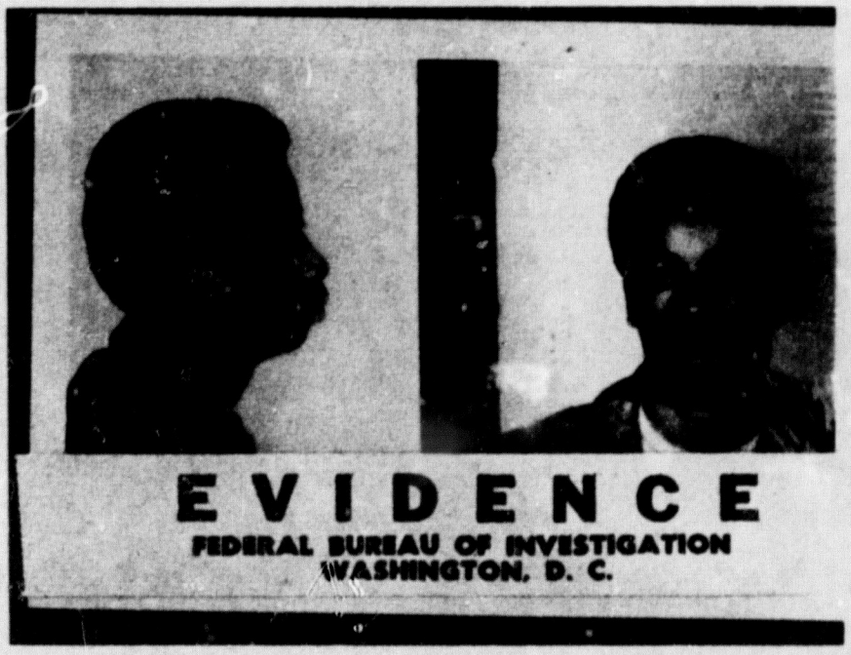
Government's Exhibit 9



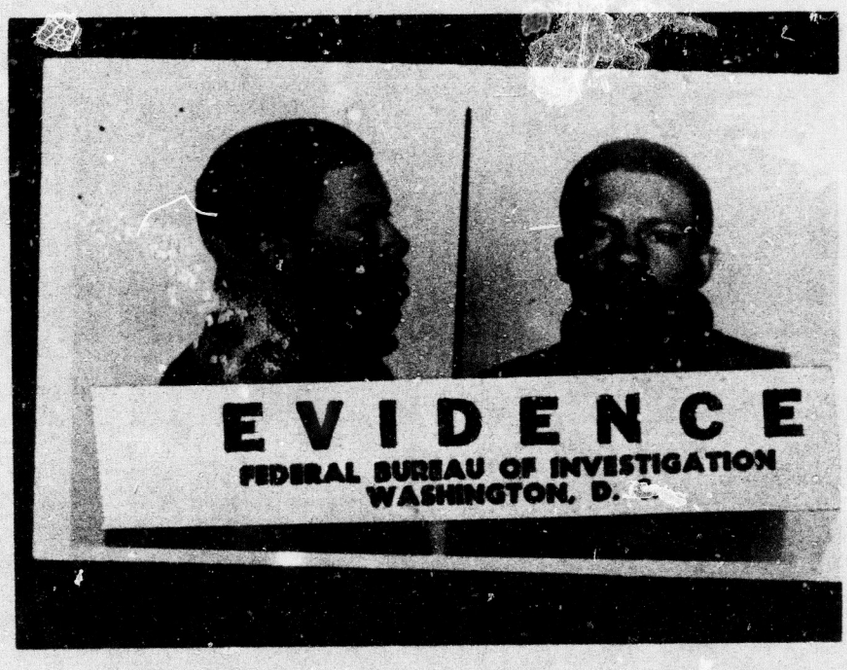
Government's Exhibit 9



Government's Exhibit 9



Government's Exhibit 9



GX3502D

GOVERNMENT'S EXHIBIT 10

9/30/76

I, Velma Grahin have reviewed the facts of the robbery of the Chemical Bank 453 E86 St NYC NY 8-30-76 with SAS Terry G. Carney & Samuel M. Workman FBI NY

Agent Workman showed me a set of 6 photos. I picked out one of the photos as the individual who counted the teller counter on the day of the robbery. I picked him because I remembered his face. I have signed my full name & dated this photo & I have initialed & dated the other 5 photos.

X. Velma Grahin

Witness:

Samuel M. Workman SA FBI NYC NY 9-30-76

Terry G. Carney SA FBI NY, NY 9/30/76

USA 33s - 475
(ED. 4-23-71)

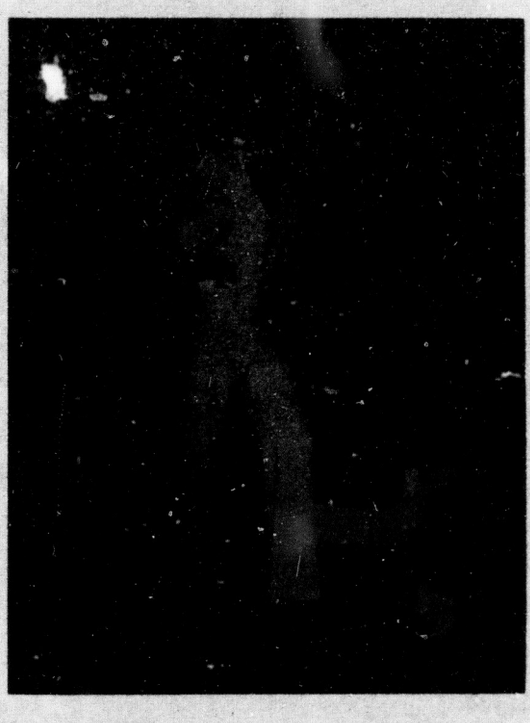
GOVERNMENT'S
EXHIBIT 10 SD
U. S. DIST. COURT
S. D. OF N. Y.

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GOVERNMENT'S EXHIBIT 13A



GOVERNMENT'S EXHIBIT 13



259a

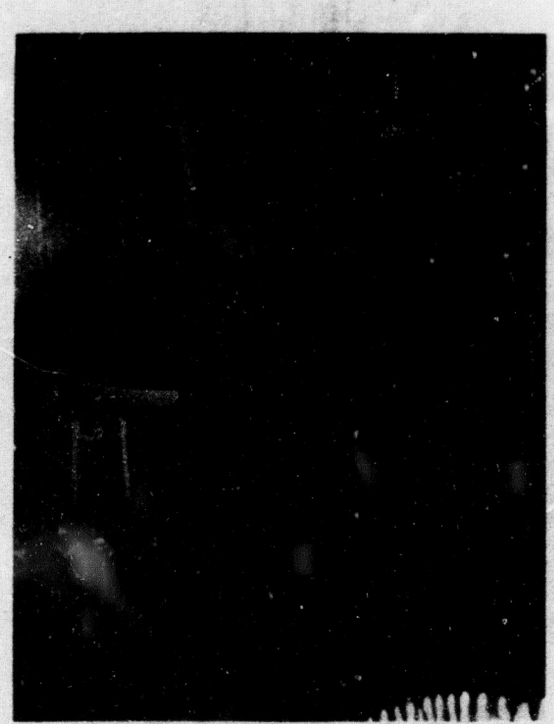
Government's Exhibit [illegible]



Government's Exhibit 13



Government's Exhibit 13



FD-395 (Rev. 10-10-67)

GOVERNMENT'S EXHIBIT 14

INTERROGATION; ADVICE OF RIGHTS

YOUR RIGHTS

Place MC NY
Date 10-7-76
Time 6:18 PM

Before we ask you any questions, you must understand your rights.

You have the right to remain silent.

Anything you say can be used against you in court.

You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.

If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.

If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed Kim Cranshaw

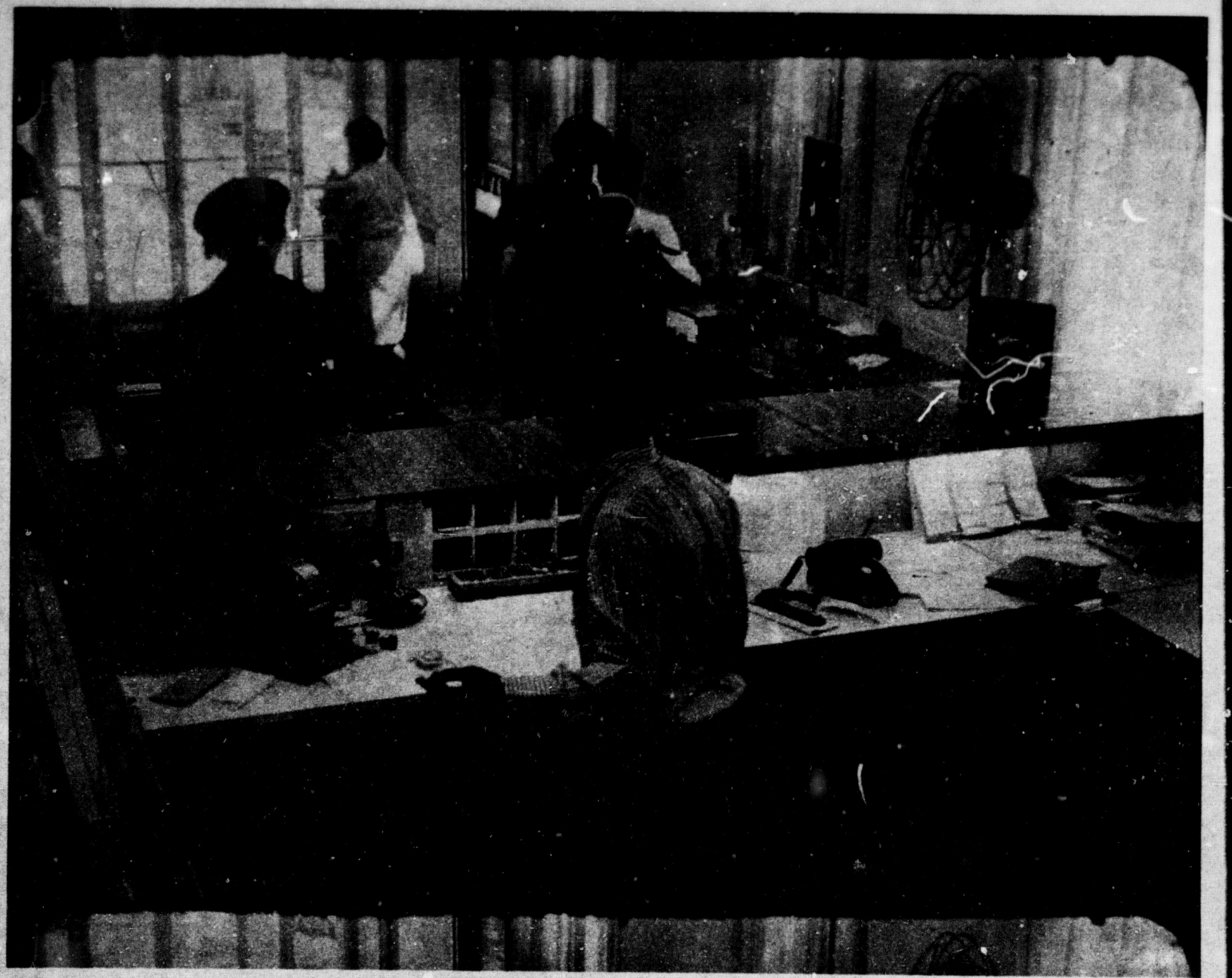
Witness: Jack McWilliams SA FBI MC NY 10-8-76

Witness: Jerry A Carey SA FBI NY.NY 10/8/76

Time: 6:22 PM

USA 33s-475
(SD. 4-23-71)

GOVERNMENT'S
EXHIBIT 1429
U. S. DIST. COURT
S. D. OF N. Y.



GOVERNMENT'S Exhibit 15

263a

his is a picture of me

Ken M. Crawshaw

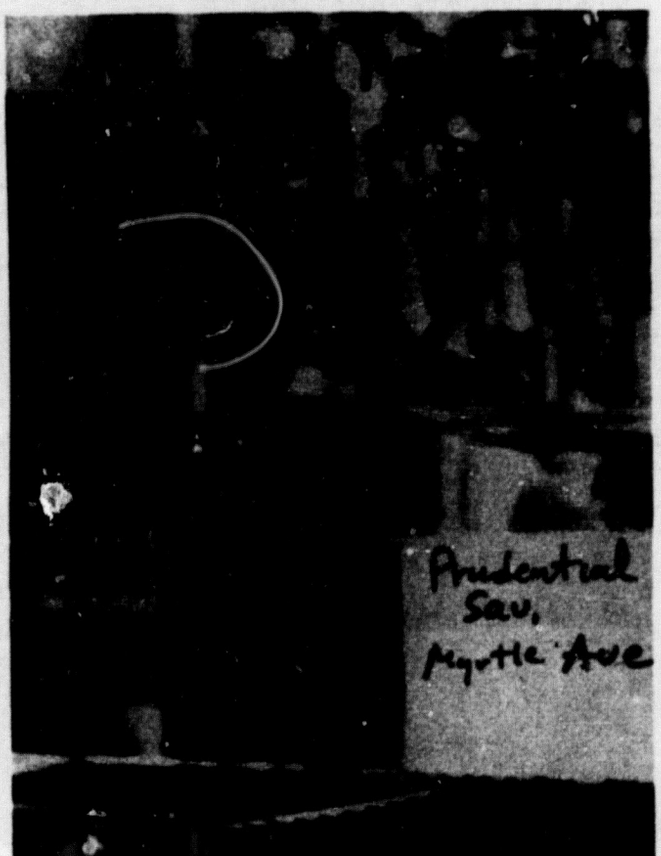
Reverse Side of Government's Exhibit 15

264a

GOVERNMENT'S EXHIBIT 16



GOVERNMENT'S EXHIBIT 18



A 202 Affidavit of Personal Service of Papers

LUTZ APPELLATE PRINTERS, INC.

FEDERAL COURT
SECOND SCIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

- against -

KIM CRANSHWW,
Defendant-Appellant.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF *ss.:*

I, James A. Steele, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at 310 West 146th Street, New York, New York,

That on the [redacted] 10th *day of* Feb. *19* 877 *at* One St. Andrews Plaza New York, N.Y.

deponent served the annexed

Appendix [redacted]

upon U.S. Atty. - So. Dist. Robert Fiske, Jr.

the *in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the* *herein,*

Sworn to before me, this 10th *day of* February, *19* 77

Robert T. Brin

James A. Steele

Print name beneath signature

JAMES A. STEELE

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977